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ABSTRACT

The seven articles in this monograph explore the relationship between legislation and policies/regulations directed at the education of students with special educational needs, and actual practices in schools and classrooms. The first article, "The Impact of Special Education Legislation on Schooling: A United States Perspective" (Mary Lynn Boscardin), discusses the possibilities and problems associated with the impact of special education legislation and school reform movements on the education of student with disabilities in the United States. "Dilemmas, Contradictions and Democracy: Models in the Governance of Special Needs Education in England and Wales" (Alan Dyson), describes the tensions posed by the realignment of power and responsibility among the central government, local education authorities, and individual schools in special education in England and Wales. "Special Education Legislation and Policies in the Context of Education Reforms: The New Zealand Model" (David Mitchell), focuses on ways New Zealand is attempting to build flexibility into its education reform agenda. "Legal Rights of Students With Disabilities: Indicators of Legislative Performance in Canada" (William J. Smith and William F. Foster), discusses the problems of educational equity in Canada within a social/political context. "Meeting Special Educational Needs within a Legislative Framework: The Scottish Experience" (George O. B. Thomson), considers the impact of legislation to support provision for special education needs within the Scottish context. "Legislation in Australian Special Education Intent and Effect: The Impact on Child, Family and Teacher" (Roy I. Brown), discusses the dichotomy between legislation governing special education and special education practices in Australia. The final article, "Brazilian Special Needs Education: Conceptual Framework and Policy for the 1990s" (Georgia M. Kerns and F. S. Cavalcante, Jr.), discusses inclusion, special education teacher preparation, principles of special education, service models, integration, and special education eligibility in Brazil. (Each article contains references.) (CR)

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# THE VIEW FINDER:

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# New Models For Re-forming Special Education

*Editors:*

**David Mitchell**
**Judy Kugelmass**

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# THE VIEW FINDER

## VOLUME FOUR

## New Models for Re-forming Special Education

**Editors**

**David Mitchell**
School of Education
University of Waikato
Hamilton
NEW ZEALAND

**Judy Kugelmass**
School of Education
State University of New York
Binghamton
NY
USA

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## Authors' Addresses


Professor David Mitchell
School of Education
University of Waikato
Private Box 3105
Hamilton
NEW ZEALAND

fax: (64-7) 838 4298
e-mail: dmitch@waikato.ac.nz

Dr Judy Kugelmass
Division of Education
School of Education and Human Development
Binghamton University (State University of New York)
Binghamton
NY 13902
USA

fax : (1-607) 777 6041
e-mail: JKugelmass@aol.com

Dr Mary Lynn Boscardin
School of Education
University of Massachusetts at Amherst
Box 34170
Amherst
MA 01003-4170
USA

fax : (1-413) 545 1523
e-mail: mlbosco@educ.umass.edu

Professor Roy I. Brown
School of Special Education and Disability Studies
Flinders University of South Australia
Box 2100 GPO
Adelaide
SA 5001
AUSTRALIA

fax: (61-8) 201 3210
e-mail: Roy.Brown@flinders.edu.au

Professor Alan Dyson
Department of Education
University of Newcastle upon Tyne
St Thomas Street
Newcastle upon Tyne
NE1 7RU
UK

fax: (44-191)-222-8170
e-mail: D.A.Dyson@ncl.ac.uk

Dr Georgia M. Kerns and
F. S. Cavalcante Junior
Department of Education
Morrill Hall
University of New Hampshire
Durham, NH 03824
USA

Fax: (1-603) 862 2174
e-mail: gmk@christa.unh.edu

Dr George Thomson
Institute for the Study of Education and Society
The University of Edinburgh
10 Buccleuch Place
Edinburgh
Scotland
EH8 9JT
UK

fax: (44-131) 650 6878
e-mail: G.O.B.Thomson@ed.ac.uk

Dr William J. Smith and Professor William F. Foster
Office of Research on Educational Policy (OREP)
McGill University
3724 McTavish
McGill University
Montréal
H3A 1Y2
CANADA

Fax: (1-514) 398-8260
e-mail: wj-smith@dublin.cel.mcgill.ca
bill@FALAW.Lan.McGill.CA

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# INTRODUCTION

**David Mitchell**
University of Waikato, Hamilton, New Zealand
and
**Judy Kugelmass**
State University of New York, Binghamton, USA

This issue of *The View Finder* has its origin in the International Special Education Congress, held in Birmingham, England, in April 1995. Six of the seven papers[1] making up this issue were originally presented at that Congress under the convenership of one of the editors (DM). The contributors were asked to explore the relationship between legislation and any associated policies/regulations directed at the education of students with special educational needs, and actual practices in schools and classrooms, with particular attention to the degree of consistency between legislation/regulations/policy and practice and the reasons for the relationships between them. In the intervening two years, the authors have substantially revised their papers and have taken the opportunity to up-date their content. The final product comprises papers from Australia, Brazil, Canada, England and Wales, New Zealand, Scotland and the United States.

Given that many countries are currently undertaking critical reviews of their education systems, including the place of special education, the monograph's theme, 'New Models for Re-forming Special Education,' is a particularly appropriate one to explore at this time. In arriving at a new model for special education, the following lines from T.S. Eliot's *The Hollow Men* could well be taken as the motif of the task:

Between the idea
And the reality
Between the motion
And the act
Falls the Shadow

In each of the seven countries whose special education systems are portrayed, many 'Shadows' fall between the 'ideas', as expressed in legislation and policies regarding the rights of individuals with disabilities, and the 'reality' of what actually occurs in classrooms, schools and the broader society. The degree of isomorphism between policy, legislation and practice varies from country to country, sometimes for reasons that are specific to a particular country, but more often reflecting general issues that characterize all societies. As will be discussed in this chapter and in the succeeding ones, these general issues can be expressed in the form of two interlocking propositions:

- educational legislation and social policy are insufficient guarantees of human rights, and
- tensions exist between the central and dispersed control of social and educational policies.

**Human Rights**

Perhaps the major theme which connects the papers in this monograph is one that any reader who may have become complacent about the progress made in assuring equal rights for individuals with disabilities will find disturbing: educational legislation and social policy are insufficient guarantees of human rights.

Special education legislation has largely been built on principles that support the rights of individuals for equal opportunity. As with all human rights legislation, these laws have been developed in an attempt to elevate the ways individuals treat one another. The ethical systems from which these laws evolved transcend geopolitical boundaries and material considerations. Caring for those considered unable to care for themselves (e.g., children; the elderly; individuals with infirmity, functional impairment and/or disability) and protecting individuals from harm by others, are central to these systems. They have provided the foundation for the creation of laws that support the evolution of the conditions necessary for assuring the rights of all a society's citizens.

Although few among us would disagree that the laws of our respective countries should reflect basic principles of human rights that call for a society to care for those considered unable to care for themselves and to protect citizens from harm from others, many would argue about the definitions of the elements of these widely held ideas. What, for example, is meant by 'caring?' (The response to that question might shape our definition of which individuals are unable to care for themselves, and our idea of what appropriate care should look like; caring might be translated into pity and demeaning charity.) What actions determine 'harm from others?' (Haven't professionals, in their past attempts to 'protect' individuals with disabilities from harm by others, been guilty of inflicting irreparable damage by institutionalization, sterilization, segregated educational programming, medication, surgery?) These ideas and others central to the education and treatment of individuals with disabilities must, therefore, be understood as social constructions, reflecting the contexts in which they are put into practice.

The limitations of secular laws often reflect a lack of consensus surrounding the underlying principles these laws were designed to reflect. Scarcity of resources further complicate attempts to put well-intentioned principles into practice. The inability of societies to assure the rights of individuals is evident throughout human history and has not been limited to the treatment of any one group of people. Although the articles contained in this volume demonstrate some of the dilemmas confronting educational policy makers in assuring the rights of children with disabilities in the countries portrayed, the underlying issues could be extended to include other groups. In each case, laws and regulations were established both for the protection of citizens' rights, and as corrections for prior unjust situations. Some of the obstacles impeding the intent of legislation relate to a lack of understanding of underlying principles and/or the scarcity of material and human resources. Complex bureaucracy and the structure of existing social systems within each society have created additional barriers. Even when certain conditions have been corrected, we will see how the attitudes, beliefs and values of affluent societies lead to practices that follow the letter but not the spirit of the laws calling for equal opportunities. We will also see the ways in which conflicting priorities may have unintended, negative, consequences.

Throughout the world, special education legislation has been built on the belief that individuals with disabilities are entitled to equal access to the opportunities provided for every citizen. In this

[1] Brazil represents a new paper.

monograph, each author assesses the degree to which legislation in her/his country has assured this right within the social, cultural, political and economic contexts in which these laws were developed. Each analysis includes an explanation of the unique social and political systems in which the legislation developed, and the ways in which current social realities are impacting on the educational system. The collective analyses represented by these articles demonstrate that although great strides have been made, legislation alone has often not been sufficient in assuring human rights.

In their article, William Smith and William Foster discuss the problems of educational equity in Canada within a social/political context characterized by shrinking resources and increased demands for accountability. They offer a 'normative framework' to assess the degree to which equal educational opportunities are being offered to children throughout their country. They return to human rights principles as the foundation for a proposed development of 'standards.' The normative system they propose is "... based on a fundamental belief that all children, regardless of race, wealth, ability, or other personal characteristics, deserve the benefit of quality educational services," rather than compliance with the varying laws that currently exist in each province. They describe their model as a 'report card' developed to assess standards of equity and excellence. Their article raises the question of whether or not an international report card could be developed to assess the degree to which nations are providing equal educational opportunity for children with disabilities within different political, economic and cultural contexts. Their work calls on us to consider establishing a consensus regarding the rights of individuals with disabilities that transcends geopolitical boundaries.

Although the case of Brazil, as the least economically developed country described in this volume, presents the most obvious example of the relationship between poverty and the lack of opportunity for individuals with disabilities, the relationship between social inequities and economic systems have profound impact in even the most affluent countries. In discussing special education legislation in Brazil, Georgia Kerns and F.S. Cavalcante Jnr explain the concept of the 'real' (cf, Eliot's 'reality') as guiding its implementation. This very important point runs through each of the articles and underscores the limitations of legislation in promoting human rights when cultural traditions and political economies run counter to the propositions being espoused.

The problems facing each country in its attempts to provide appropriate educational experiences for students with disabilities offer specific examples of the limitations of legislation. This is noted by Alan Dyson in his discussion of special education within the context of school reform in England and Wales. He sees 'solutions' that have rested on a belief in 'rational-conceptions' as underlying the failure to reconstruct general education. Growing numbers of school disruptions by secondary students highlight the deterioration of the educational system. Dyson questions whether the needs of students with disabilities can be met within this context.

George Thomson identifies scarcity of resources as fundamental to the problems faced in Scotland as it attempts to implement legislation calling for more appropriate and integrated educational programs for students with disabilities. He notes, too, that whereas in the United States there is a strong tradition of civil and individual rights, the United Kingdom practice is dominated by a professionalization model in which professional groups act as gatekeepers.

Roy Brown sees the limitations of policies and regulations in Australia not in terms of the material reality of his country, but as a clash of values regarding the purpose of education. He proposes educational programs for teachers, service providers and parents that promote their understanding of the nature of educational decisions made for students with severe disabilities. Brown believes that the individual needs of the student and issues of quality of life should guide these decisions, particularly in light of the longer life-spans of individuals with disabilities in Australia.

David Mitchell presents a hopeful example in his description of the ways in which New Zealand is attempting to build flexibility into its educational reform agenda. He points out contradictions between the design of new educational policies built around a competitive, market-place model and the educational needs of children with disabilities and their families. However, he also provides examples of the ways in which the reform agenda is being adapted to accommodate special educational needs. His message is an important one: "... ideological purity must sometimes give way to flexibility."

Mary Lynn Boscardin provides a thorough picture of the complexity of special education in the United States. She discusses the many ways that legislation has enabled fully-supported inclusive education. In spite of the very positive impact of the legislation described by Boscardin, and the existence of resources that could be directed toward improving educational opportunities and access for all its children, many educational programs in the United States do not reflect the intent of its laws. Many school districts that are able to afford adequate teacher-child ratios and support services, appropriate curriculum materials and resources, staff development, accessible buildings and adequate support for families continue to educate children with disabilities in segregated settings. Even the strict monitoring of special education delivery systems has not resulted in the universal development of inclusive, or even appropriate, programs for many children. Schools in the United States serving communities characterized by high levels of poverty, crime, and drugs generally have the largest teacher-child ratios, fewest support services, inadequate materials and resources, poorly prepared teachers, deteriorating physical plants, families with multiple problems and limited availability of support services. As is the case in other countries, impoverished communities also have the largest numbers of children eligible for special education. Low-income, minority children are more frequently served in segregated facilities or special education classrooms than are children from affluent families. The relationship between the resistance to inclusion by teachers working in impoverished communities and the limited resources and intensity of problems in their schools can be easily understood. The resistance of teachers in affluent American schools cannot as easily be explained in terms of their material reality. Teachers and administrators from affluent communities cite political and bureaucratic barriers as explanations for why inclusion can't work in their schools. Resistant teachers blame the lack of collaboration or cooperation by children, parents, teachers and/or therapists. They describe scheduling, IEP objectives, assessment and curriculum demands as additional obstacles. These perceived barriers are not presented as problems to be solved, but as reasons that inclusion cannot work.

Throughout history, social systems have proclaimed higher moral standards than those they have been able to live by. These standards have been codified in laws built on a vision of what a society should strive to become. In the United States, for example, citizens continue to believe in the principles articulated in the Constitution. Although the society always falls short of these ideals, it keeps coming back to them as the 'standard' upon which the behavior of individuals, institutions and government should be evaluated. The beliefs are not abandoned because of society's current inadequacies.

**Control of Social and Educational Policies**

The second theme which connects several of the papers in the

monograph has to do with the nexus of political control. The last decade or so has witnessed a new world order of liberalism that eschews the primacy of the nation-state. Not only is the nation-state's character being altered from without by the forces of globalization, but changes are also taking place in the distribution of power within it. The phase of interventionist central governments that characterised many countries - both democratic and Communist - during much of the Cold War period is now giving way to decentralized decision-making, accompanied by an increasing recognition of diversity. In many societies, the trend is towards devolving power towards smaller units, with a corresponding re-defining of the role of the community. Some would argue that these shifts are virtually inevitable for industrial economies that hope to succeed in the information age

One of the hallmarks of education reforms in recent years has been the major redistribution of power away from central to local jurisdictions, including individual learning institutions. However, this is not a simple a matter of replacing a centralized system with a decentralized one. While the direction of the trend has undoubtedly been towards decentralization, all nation states wish to maintain some central authority over their education systems, so that, in most countries, the result has been a complex set of checks and balances, with some critical powers remaining vested in the centre and others only conditionally devolved to schools. Furthermore, the balance between centralization and decentralization is one which is constantly being re-negotiated as undesirable unintended consequences become evident or as political will changes. Obviously, any system which involves a major shift in power will attract support and opposition roughly in proportion to the gain or loss of the interested parties. The critical questions become ones such as: What activities should be the responsibility of which authorities at different levels in the system? What should be loosely organized or tightly controlled at various levels of the system? and to whom and for what should authorities at various levels be held accountable?

The majority of the papers in this monograph refer to the tensions that exist among the various levels of education administration in their countries - Federal, state/province, district, and school. Most also refer to the diversity of provisions for students with disabilities and the uneven quality of these provisions, even when legislation would seem to indicate that there should be a higher degree of uniformity.

In his chapter on England and Wales, Alan Dyson refers to tensions posed by the re-alignment of power and responsibility among central government, local education authorities (LEAs) and individual schools. He analyses these shifts in terms of the replacement of a 'centripetal' model with a 'centrifugal' one, the former approximately equating with centralization and the latter with decentralization. Dyson sees the recent history of education (and special education) in England and Wales as proceeding from a centripetal model (based on LEAs, not central government) to the current model which he describes as being "inherently centrifugal, conflictual and legalistic" as individuals and groups pursue irreconcilable interests. The resulting problems are placing pressures on central government to prescribe and legislate, i.e., to return to the earlier more centripetal model (albeit one based on central government, rather than LEAs). As an alternative solution, Dyson explores the notion of community-based partnerships. Also in the United Kingdom, George Thomson draws attention to the variability of policy formulation and implementation, with a lack of clarity in government circulars attendant on legislation.

David Mitchell explores in some detail the impact of decentralization on special education in New Zealand, discussing the balance of power exercised by the central Government and individual learning institutions. He argues that with decentralization, unless there are strong safeguards at the centre, individual schools could pursue their own idiosyncratic policies with respect to students with special educational needs, resulting in a lack of equity and an incoherent pattern of service provision across the country. These undesirable consequences can be avoided by requiring that schools conform to central legislation and policy guidelines, with clear accountability procedures.

In the highly decentralized United States, according to Mary Lynn Boscardin, the passage of federal laws define a vision but do not insure uniformity of application among states. She notes that the trend towards site-based school management was adopted to re-establish community participation and to give opportunities to address the diverse needs of communities' children. But what constitutes a 'community'? Boscardin distinguishes between two types: those derived from 'similarity-based solidarity' and those derived from 'contiguity-based solidarity.' The former carries with it the dangers of excluding those with disabilities. The inclusive school, she claims, values both diversity and solidarity "recognising individual differences while simultaneously embracing solidarity of purpose."

In Canada, where decentralization takes the form of education being the prerogative of the Provinces, William Smith and William Foster provide graphic evidence of the wide variability in the recognition of the rights of students with disabilities. Similar within-country diversity is also reported by Roy Brown in Australia and by Mary Lynn Boscardin in the United States where, in both countries, education is essentially devolved to the States.

Although the articles in this volume explore the shortcomings of each of the seven nations, in their attempts to protect human rights and to provide equal opportunities for students with disabilities, they should all be applauded for their efforts and for their ongoing examination of practices. Arguments based on issues of scarcity call for each country to examine the ways in which existing resources are allocated within as well as across its boundaries. True compliance with the human rights principles that have provided the foundation for special education requires a continuing struggle to acknowledge and examine the dilemmas inherent in work on behalf of students with disabilities and to direct energy toward their resolution. In so doing, we will have made some small contribution to reducing the Shadow that falls between the idea and the reality and this volume will have served a useful purpose.

4

# THE IMPACT OF SPECIAL EDUCATION LEGISLATION ON SCHOOLING: A UNITED STATES PERSPECTIVE

**Mary Lynn Boscardin**
University of Massachusetts at Amherst, USA

## INTRODUCTION

The purpose of this paper is to confront possibilities and problems associated with the impact of special education legislation and school reform movements on the education of students with disabilities in the United States. Marked demographic shifts (including changes in the racial and ethnic composition of the general population, rapidly growing special populations such as bilingual, Chapter I, at-risk, and disabled youngsters, and a sharp increase in the number of children living in poverty), coupled with a movement towards restructuring, has meant that educational leaders have had to create school environments that embrace and support these more challenging populations while at the same time work toward shared goals and purposes.

This paper begins with a discussion of the judicial and legislative changes that have contributed to the education of students with disabilities. The uniformity in application of the judicial decisions and legislative mandates is compared across states. The effects of school reform movements on the restructuring of U.S. education is followed by a discussion of how to best meet the challenge of the next century for U.S. schooling. Lastly, this paper concludes with an analysis of the impact legislation has had on the education of students with disabilities and recommendations for ways to reconceptualize schooling to fit the future needs of not only students with disabilities, but of all students in the United States.

## JUDICIAL AND LEGISLATIVE CHANGES

Judicial and legislative changes represent reasoned collective decisions that give voice to social values. Schools are not prepared, nor necessarily willing, to deal with the changes necessary to meet the needs of diverse student populations. Judicial decisions and legislative mandates serve as the catalyst for introducing change to schools. These decisions and mandates cover students who are disabled, economically disadvantaged, and possess limited English proficiency skills.

This legislation, however, has not always resulted in positive effects. Legislation in this instance has resulted in educational silos. The laws developed to protect the rights of individuals with disabilities do not cross-index each other or other related laws that provide similar services. The net effect is the existence of dual educational systems, duplication of services, and gaps in services. The legislation has also contributed to the creation of a litigious environment that shifts the focus away from educational interventions. As the laws are discussed below, these issues will be fully considered with an eye toward possible solutions.

Significant judicial actions have prevented people from being excluded, discriminated against, or denied access to educational programs, employment opportunities, or places of commerce. For example in landmark decisions, *Brown v. The Board of Education* (347 U.S. 483 (1954)) required racial minorities to be integrated into the public schools, *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (E.D. Pa. 1972)) provided a public education for children with mental retardation, and *Mills v. Board of Education of the District of Columbia* (348 F. Supp. 866 (D.C.C.1972)) established the right to an education for all students with disabilities and required that students receive a hearing prior to exclusion or classification.

Legislative mandates, in many instances, were an out-growth of judicial decisions and were developed to guide the schools in the development of inclusive programming. A series of special education legislative actions began as early as 1958 with the passage of the National Defense Education Act (P.L. 85-926). This Act provided funds for universities to train teachers of children with mental retardation. Although *Brown* (1954) banned segregation, it did not prohibit discrimination. The major shift in philosophy came with the passage of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin. This law opened the watershed for the legislation that banned discrimination and served as the model for the Rehabilitation Act of 1973.

The Rehabilitation Act of 1973, Section 504, protected individuals with disabilities from being excluded, discriminated against, or denied the benefits of any program or activity receiving federal assistance (P.L. 93-112, 1973). P.L. 93-112 extended the 1964 Civil Rights Act, recognizing the rights of individuals with disabilities and prohibiting discrimination against individuals based on their disabilities. The Rehabilitation Act Amendments of 1986 (P.L. 99-506) required the development of supported employment programs for adults with disabilities.

Public Law 93-380, the Education Amendments of 1974, was passed shortly after P.L. 93-112. This law required states to develop a plan for meeting the needs of individuals with disabilities in order to retain their eligibility to receive federal funds. These plans required the approval of the U.S. Commissioner of Education. With the enactment of this law, the federal government moved beyond the role of catalyst for state activities and increased its involvement and control in the funding of education for individuals with disabilities.

Public Law 94-142, the Education for All Handicapped Children Act, was passed by Congress in 1975. This law was designed to carry out the provisions of P.L. 93-380. The purpose of P.L. 94-142 was to assure that all children with disabilities had available to them a free appropriate public education that was specifically designed to meet their unique educational needs. This law spelled out and protected the rights of disabled children and their parents. The law was also designed to assist states and localities in providing for the education of all children with disabilities through a team process, where parents and educators participated as equal partners.

In 1983 the Education for All Handicapped Children Act was amended by (P.L. 98-199). The law required states to begin collecting data on the number of handicapped youth exiting the school systems and the needs of adolescents to make the transition to adulthood. It also gave incentives to states to provide services to infants and pre-schoolers with disabilities. This law was further amended in 1986 (P.L. 99-457). States were encouraged to develop comprehensive interdisciplinary programs for infants and toddlers (birth through age 2) and to expand services for pre-school children (aged 3 through 5). After the 1990-91 school year, states were required to provide free, appropriate education to all 3- to 5-year-olds with disabilities, to be eligible for federal funding.

Most recently, the provisions of EHA have been extended through the Education of the Handicapped Amendments of 1990 (P.L.

101-476). This law amended the Education of the Handicapped Act and changed the name of the law to Individuals with Disabilities Education Act (IDEA). Specifically, this law added autism and traumatic brain injury as two new categories of disability, required all IEPs to include a statement of needed transition, and expanded the definition of related services to include rehabilitation counseling and social work services. The law also addressed the need to provide services for under-represented minorities and limited English proficient (LEP) individuals. The law specifies 16 as being the age by which transitional services must begin. These transitional services include, but are not limited to, post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living or community participation.

In 1965 the Chapter 1 program was enacted as Title I (P.L. 89-313). This law focused on the needs of the poor and educationally disadvantaged students. The Chapter 1 program has two funding formulas: one formula, the Basic Grants, is based on child poverty counts at the county level and a second formula, Concentration Grants, augments Basic Grants in school districts with high concentrations of children from low income families. Eligibility for individual student services is based on educational performance, usually a standardized test. Since the original enactment of Chapter 1, the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary Improvement Amendments (P.L. 100-297) were passed. The purpose of these amendments was to introduce assessment and evaluation of the Chapter 1 program, measuring the educational quality of the projects it funded.

The first Bilingual Education Act (P.L. 90-427) was passed in 1968. It is also known as Title VII of the Elementary and Secondary Education Act. The purpose of this law was to "establish equal educational opportunity for all children (a) to encourage the establishment and operation, where appropriate, of educational programs using bilingual education practices, techniques, and methods, and (b) for that purpose, to provide financial assistance to local education agencies, and to State agencies for certain purposes, to carry out such programs in elementary and secondary schools, including activities at the pre-school level...."

In 1974 Congress amended the Bilingual Education Act (P.L. 93-380) to remove the requirement that limited English speaking ability (LESA) children be from low-income families. This increased the number of students who were eligible for services. In 1978 Congress further amended the Bilingual Education Act through P.L. 95-561. The definition of the target population was changed from LESA to LEP (limited English proficiency). LEP was defined to include children with limited English reading, writing, speaking, and comprehension skills. This amendment included Native Americans and Alaskan language groups.

P.L. 98-511 amended the Bilingual Education Act in 1984. This law increased the funding for Bilingual Education and increased the number of programs. Other acts that same year and earlier incorporated bilingual components. These include the bilingual training provisions of the Carl Perkins Vocational Education Act of 1984, the refugee education provisions of the Refugee Act of 1980, and provisions of the Emergency Immigrant Education Act of the Education Amendments of 1984. Finally, the passage of P.L. 101-297 in 1988 increased the cap on special alternative programs from 10% to 25%. However, in 1984 a ceiling was placed on the amount of available funding for bilingual education programs. Thus, while programs and students increased, available funding decreased.

These judicial and legislative changes over time have drawn our attention to the need to weave students from diverse groups into the fabric of the school without diminishing their differences and reducing the possibility of disenfranchisement or marginalization. The impact legislation has had on school systems is the inclusion of more and more students with different disabilities being placed in increasing numbers of public school programs as eligibility criteria and age ranges have been broadened with the passage of each successive amendment to each of these laws. Funding, however, has not kept up with the propagation of programs. This is not to say these laws are inadequate in the wake of limited resources. What may be inadequate is how we think about structuring these programs within schools, given the available resources.

How states interpret and apply judicial decisions and legislative mandates is one example of how differences are used to create solidarity. A framework is presented later in the paper to guide our thinking about how to best accommodate these differences. This framework suggests that solidarity can be built around differences. Prior to discussing this framework, however, it is important to consider how the application of federal legislation varies from state to state and the role of school reform.

## UNIFORMITY IN THE APPLICATION OF FEDERAL LEGISLATION

The passage of federal laws defines a vision and guides the direction of the nation, but does not ensure uniformity of application among the states. Each state, as mentioned earlier, is responsible for deciding how these federal laws will be enacted. States are free to establish more stringent interpretations of the federal law to meet the needs of their populations, but their laws may not be less restrictive. P.L. 94-142 and the contiguous New England states of Vermont and Massachusetts will be used to demonstrate how differently these federal laws are interpreted. Five parallel sections from the two states' laws serve as the basis of comparison.

Massachusetts is more comprehensive than Vermont when it comes to early identification. The special education rules in the State of Vermont (1992) uses phrases such as: "agencies shall identify, locate and evaluate children birth through twenty-one years of age within their jurisdictions who are in need of special education" (sect. 2360). The Commonwealth of Massachusetts (1992), on the other hand, mandates parent orientations, workshops, public notices of these events, and screening, as part of their Child Search Program (sect. 304). School districts within Massachusetts are also required to have a three year Child Search Plan. Vermont requires no pre-planning. Vermont, on the other hand, includes children from birth to 21 years of age, where Massachusetts begins at age three. However, only children between the ages of three and five are targeted for Essential Early Services in Vermont (sect. 2361). Vermont law clearly states, "once a school district has fulfilled its obligations to children ages three to five, grant funds may be used to provide Essential Early Education services to children who are birth through 2.11 years of age." Massachusetts encourages referrals when a child is 2.5 years of age but does not require it. Vermont appears to have a more comprehensive evaluation of children referred for early intervention, whereas Massachusetts requires the basic screening process.

There are 15 contrasting points between the assessment sections in the Massachusetts law (sections 317-321) and the Vermont Law (sect. 2362). Included are issues of inclusive cultural assessment, reporting, time frame, and involvement of the special education administrator. Vermont calls their assessment team a "Basic Staffing Team" whereas Massachusetts provides no name. Vermont's major strengths include: (a) mention of accommodations for behavioral and emotional characteristics, (b) trained personnel observing and reporting on student's classroom behavior, (c) using standard error and confidence bands for test scoring/reporting, and (d) signatures suggesting agreement or disagreement with the recommendations.

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Massachusetts' strengths include: (a) a time frame to complete the assessment (30 days), (b) sensitivity to culture-free and linguistic-free testing, (c) an interpreter for parents or student, (d) periodic review by Department of Education, (e) the allowance for (further) testing requests by the Special Education Administrator and parents, (f) waiver of assessment (if deemed appropriate), and (g) attempts by the Special Education Administrator to ensure parents' presence at team meetings. One of Massachusetts' most solid strengths is the articulation of sensitivity to cultural issues. Vermont's strength is having a trained professional observe and report the student's classroom behavior.

Both states consider cultural differences in the evaluation process. Massachusetts law (sect. 320.1) states "tests and evaluation materials [must be] as free as possible from cultural and linguistic bias, and have been separately evaluated with reference to the cultural and linguistic groups to which the child belongs." The law goes on, stating that tests need to be administered "in the child's native language ... or other mode of communication unless it is clearly not feasible to do so." The Vermont law (sect. 2362.2) states, "evaluation procedures shall be provided and administered in the child's native language or other mode of communication unless it is clearly feasible not to do so." The Vermont law does not incorporate the dangers of cultural bias into the law; it only addresses language differences. Although Massachusetts recognizes cultural bias, the feasibility clause allows for liberal interpretation. Only Massachusetts considers the issue of validity around norms and standardization procedures: "whenever testing of the child is required or permitted by these regulations, the results of standardization or local tests of ability, aptitude, affect, achievement, aspiration, or projective personality tests are not used exclusively or principally as the basis for finding any conclusion." However, while the law is sensitive to the possibility of bias, it is vague about score interpretation.

Vermont and Massachusetts approach the 'least restrictive environment' from quite different perspectives. For example, Vermont law (sect. 2363.4.1) is clear about "barriers to the participation [of students with disabilities being] addressed whenever possible by the provision of accommodations and supplemental services." Massachusetts law does not make this provision. Vermont regulations also stipulate that "placements shall be made on an individual rather than categorical basis" (sect. 2363.4.3). The Massachusetts regulations lack a similar policy. It could be argued that Massachusetts relies on the IEP to act as a catalyst to ensure each student with disabilities receives individualized treatment. Lastly, Vermont makes a strong statement about the role of nonacademic and extra-curricular activities:

In providing or arranging for the provision on nonacademic and extra curricular services and activities, the responsible agency shall insure that an eligible student participates with non-disabled students in those services and activities to the maximum extent appropriate to the needs of the student (sect. 2362.4.4). This provision makes inclusion more than an 8:30 am to 3:00 pm activity.

The Massachusetts suspension and expulsion laws (sect. 388) are much more detailed than the Vermont suspension and expulsion laws (sect. 4312). The Massachusetts laws require students with disabilities not be suspended for more than 10 *cumulative* days, whereas the Vermont law permits school personnel to suspend students for no more than 10 *consecutive* days at a time. The Vermont law leaves the door open for students with disabilities to be excluded from school for significant amounts of time. Neither set of regulations differentiates between suspension (in-school) and expulsion (out-of-school). The two terms are used interchangeably, which was an important issue noted by Boscardin, Moyer, and Scarpati (1989). Massachusetts requires that each school district: (a) submits a code of conduct to the State Department of Education, (b) distributes student handbooks with the code of conduct, (c) has in place a procedure to notify students and school personnel of their due process rights, (d) maintains a record for the number and duration of suspensions and expulsions, and (e) designs IEPs that specify modifications in the code of conduct, if applicable, for each student with a disability. Unlike the Massachusetts law, the Vermont law specifically addresses the illegal use of alcohol and drugs and states that the general code of conduct will be applied in these instances. Both states adhere to the 'stay-put' provision of the law which permits a student with disabilities to remain in their present placement in school until all procedural remedies have been exhausted.

The areas of concern varied widely between the two states. It appears from these examples that Vermont placed more emphasis on least restrictive environment and Massachusetts gave greater importance to the areas of early identification, cultural differences in the evaluation process, and suspension and expulsion. Each state had off-setting strengths in the area of assessment. Why states emphasize some areas more than others may be influenced by previous litigation and the availability of funds to support certain efforts.

Federal and state laws, along with judicial decisions, are only one way of invoking change. Once these laws are enacted they must be shaped to meet the educational needs of the community. Often this is accomplished through political action or reform movements. The various school reform movements play an important role in shaping these changes, and more specifically in this case, in developing the 'inclusive' school.

## SCHOOL REFORM

School reform has been a regular feature of the U.S. educational landscape for the past century. Rarely do philosophical considerations or empirical research findings foster school reform. Rather, these movements typically occur in response to perceived failures of our public educational system as it compares to those of other countries. The most recent school reform movement occurred in two waves. The 'first wave' reforms of the early 1980s promoted top-down organizational change (*A Nation at Risk Report*, 1983; Petrie, 1990). For far too long, school reformers failed to recognize the systemic nature of the educational enterprise, and therefore these past efforts were only partially successful. For example, schools and teachers can be asked to do more by directives initiated from the top of a hierarchical structure, but there is little likelihood that they will 'do it better' unless significant changes are made in how schools are organized and run.

Two notable reports, written in the same year, the *Carnegie Report* (1986) and the *Holmes Group Report* (1986), were part of the first wave of educational reform. Both of these reports glossed over the role that special education would play in the restructured school. This was somewhat surprising and at the same time disconcerting given the explicit attention special education received that same year when Madeline Will (1986), then Assistant Secretary of the Office of Special Education and Rehabilitative Services of the U.S. Department of Education, cited problems with special education services which ignited the Regular Education Initiative (REI).

The REI promoted social and academic integration of students with disabilities into the regular classroom. Skrtic (1988) noted that it signaled the end for mass-produced schooling and introduced an era of recognition of the unique, individual needs of students. However, teachers and administrators often indicated that it was nearly impossible to meet everyone's needs within the context of actual school practices. As Skrtic (1988) pointed out, schools became 'adhocracies' (i.e., problem-solving organizations in which teachers and specialists collaborate with one another to best serve the

student's individual interests) to mediate issues as they arose. While REI promoted mainstreaming, children were still being pulled out of the classroom to receive special education services.

Site-based management (SBM) and shared decision-making were adopted to re-establish community participation and create bottom-up management structures, as recommended by *Goals 2000* (1993). By pushing key decisions, including resource allocation, from the central office down to the school site, school officials, teachers, parents, and other constituents of the community have the opportunity to address the unique and diverse needs of the community's youngsters. The full inclusion movement paralleled the SBM movement and, according to Fuchs and Fuchs (1994), so did the radicalization of special education reform. Stainback and Stainback (1992) were radical in their definition of full inclusion, defining the inclusive school as a place devoid of special educators, a place where full inclusion reigns. They argued vociferously for the elimination of the placement continuum:

> An inclusive school or classroom educates all students in the mainstream. No students, including those with disabilities, are relegated to the fringes of the school by placement in segregated wings, trailers, or special classes (p.34).

Gartner and Lipsky (1987) concurred when they wrote:

> The concepts of Least Restrictive Environment - a continuum of placements, and a cascade of services - were progressive when developed but do not promote *full* inclusion of *all* persons with disabilities in *all* aspects of societal life (p.52, emphasis in original).

The perception of mainstreaming prior to the full inclusion movement was that students with disabilities would work alongside their peers, but not be fully integrated into the general education classroom. With the inclusion model, services are delivered directly in the classroom to students with disabilities. The Stainbacks seem, in this instance, to mask student differences for the sake of solidarity and to unrealistically expect teachers to be specialists in all areas. The best alternative may be Gartner and Lipsky's recommendation to not totally eliminate these services but to reconceptualize them in terms of how they are delivered to students in keeping with an inclusive environment.

While these reform efforts should be applauded, much of the emphasis has been primarily at the classroom level with little being done to co-ordinate school-wide efforts. It is not uncommon to walk into a school building and see full inclusion being carried out from greater to lesser degrees by individual classroom teachers. In the next section a framework is presented for addressing ways that efforts can be extended beyond both the classroom and system into the community.

## MEETING THE CHALLENGE OF THE NEXT CENTURY IN U.S. SCHOOLING

Differences in laws and classroom practices as they are applied to schools and students often lead to disjointed educational programming. When it comes to educating the child with disabilities or the student who is at-risk, often solidarity is compromised for the sake of diversity and vice versa. It seems contradictory to think that one can address individual student needs while at the same time achieving over-arching school and/or district goals. To meet the demands of the judicial and legislative mandates, as well as the challenges of the school reform efforts, the inclusive school is proposed as a solution in this section. The concepts of solidarity and diversity, alluded to earlier in this paper as proposed by Maxwell (1994) and Sergiovanni's (1993) notion of community, are used to frame the inclusive school - a place where it is possible to have over-arching goals and differences.

Sergiovanni (1993) used Tonnies's (1957 [1887]) definition of *gemeinschaft* to introduce his conceptualization of community, as it contrasts with organization. According to Sergiovanni (1993), community places a heavy emphasis on the informal relationships people have with one another: "Life in organizations and life in communities are different in both quality and kind" (p.6). Whereas organizational relationships are codified externally by roles and role expectations, relationships in communities rely on natural interdependence, much like organic solidarity as proposed by Durkheim (1984 [1893]). Sergiovanni contends that natural interdependence relies on a shared sense of belonging that develops from "common goals, shared values, and shared conceptions of being and doing (pp.10-11)." Thus, in Sergiovanni's conception, similarity is a prerequisite for solidarity. But if similarity is central to social solidarity, what does this mean for diversity? Quite often diversity is viewed by educators as a problem, a troublesome impediment to solidarity.

Maxwell (1994) suggests otherwise and offers contiguity as a complementary component of solidarity:

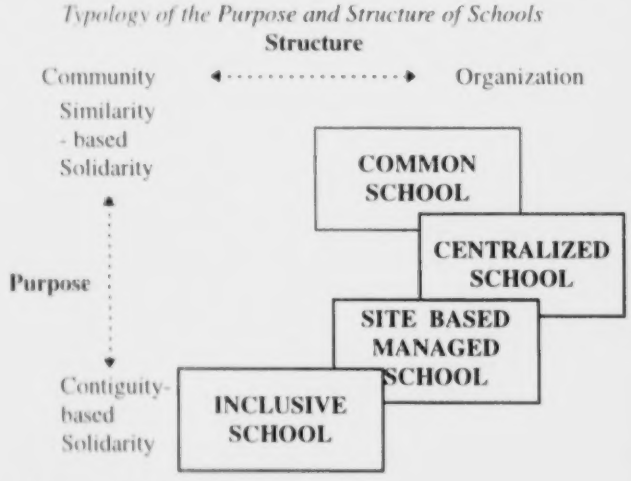
> Similarity-based solidarity derives from the ways in which people recognize or construct *resemblances* between one another, ways in which they are *alike*. Contiguity-based solidarity, on the other hand, derives from the ways in which people *interact*, meet one another's needs, and thereby come to care about one another (p. 8, emphasis in original).

Maxwell's distinctions are of note because contiguity, in contrast to similarity, embraces diversity. Diversity emphasizes individual differences and uniqueness. Because they can complement each other's strengths and weaknesses, individual differences may enable people to meet one another's needs. Maxwell contends that both similarity and contiguity can bring people together, and that diversity should be highly valued within the context of solidarity because situations exist in which diverse skills, talents, and even beliefs may be needed to complete a common task. Educating children is one such example. Maxwell's conceptions of similarity and contiguity are the twin pillars of solidarity, and the foundations of the inclusive school. Unlike Sergiovanni, Maxwell's (1994) contiguity-based solidarity makes it possible to create community around differences, as well as similarities. This will be demonstrated in the discussion that follows.

Boscardin and Jacobson (in press) introduced a framework that separates schools by structure and purpose. This framework is demarcated using the expanded notion of Sergiovanni's (1993) concepts of organization-community and Maxwell's (1994) solidarity-diversity contrastive elements (see Figure 1).

**Figure 1**

*Typology of the Purpose and Structure of Schools*



To better illustrate our model, we will discuss four types of schools within the context of our framework and highlight characteristics that are retained and discarded. The one-room schoolhouse sat at the center of the community and embraced the notions of unity and solidarity. In Figure 1, similarity-based solidarity was the central objective of the one-room schoolhouse, but structurally, each school could be as different as the community in which it was situated. It provided a place for the community to congregate not only for purposes of business, but also for social events. This school was a place in which community members took pride. Because it involved the community, opportunities for inter-generational interactions were available. While these schools provided a sense of warmth and closeness, the quality of education in the one-room schoolhouse began to deteriorate with time as control slipped into the hands of the economy-minded local citizens.

To rectify this situation, Horace Mann, during his tenure in the Massachusetts Senate, led a vigorous reform movement to centralize education in an effort to halt the decline of the schools by reasserting state control. The result was the establishment of the Massachusetts State Board of Education in 1837, charged with collecting, compiling, and disseminating school data. Mann relinquished his senate seat to become the Board's first Secretary. During his 12 year tenure, Mann (1849) introduced the notion of the common school (synonymous with elementary education) and situated it around six fundamental propositions: (a) that a country cannot remain ignorant and free, thus the need for free public education; (b) that education must be controlled and paid for by the public; (c) that education is best provided in schools embracing children of all religious, social, and ethnic backgrounds; (d) that education be free of sectarian religious influence; (e) that education be permeated throughout and governed by the beliefs of a free society and not embedded in a dogmatic pedagogy; and, (f) that such an education can only be provided by well-trained teachers who have mastered both subject matter and pedagogy.

Although the common schools were open to children of all religious, social, and ethnic backgrounds, conformity was still the standard of the day. Children who were seen as different were often excluded from these schools, and either kept at home or, less frequently, sent elsewhere for their education. It was this legacy of exclusion that led to future legislative mandates.

During the next period when the U.S. saw itself as a 'melting pot,' the needs and ethos of industry strongly influenced the purpose and structure of American schools. It was a time of development, and diversity was not highly valued, nor valued at all, for that matter. Rapid industrialization produced a need for a large, but cheap, labor force that had a common language and work ethic, factors that would make supervision easier and less costly. While the similarity-based purpose of the common school met this requirement, rising immigration and birth rates resulted in more schools being built to accommodate America's growing school age population. It became increasingly apparent that schools would have to make some structural adjustments in order to create economies of scale.

With the introduction of scientific management to education during the first half of the 20th century, efficiency became increasingly valued, as were specialization, division of labor, and interdependence (Callahan, 1962; Taylor, 1911; Weber, 1947). The consolidation and centralization of common schools were the mechanisms most often used to achieve greater efficiency. The number of public school districts in the U.S. declined from 117,108 in 1939-40 to 40,520 in 1959-60 to 15,912 in 1979-80 (Odden & Picus, 1992, p.4). The sharpest reductions took place in the 1950s and 1960s as the baby boom forced a rapid increase in new school construction.

Pre-school, secondary, and vocational education were added to the continuum of public educational services, as were a host of services developed specifically for a growing special population. With the passage of the National Defense Education Act (P.L. 85-926), Civil Rights Act in 1964, The Rehabilitation Act of 1973, Section 504, Public Law 93-380, the Education Amendments of 1974, and Public Law 94-142, the Education for All Handicapped Children Act of 1975, more and more students were included in the educational process for longer and longer periods of time.

Similarity-based solidarity remained the primary purpose of the centralized school, as in the common school. But, unlike the community orientation of the common school, the centralized school developed a more formal structure, much like the organic social solidarity of which Durkheim (1893, 1984) spoke (see Fig. 1). School boards and administrators developed goals and policies. More students than ever were included in the formal educational structure of the centralized school, but students were still grouped homogeneously and segregated according to ability level and/or type of disability. Similarity was promoted in both purpose and structure within this formal organization.

Following this centralization effort was a decline in enrollment as the 'baby boomers' matriculated through the system, and a rise in student diversity. Thompson (1992) reported the total public school enrollment in the U.S. declined 5.9% between 1976 and 1986, yet among Hispanics and Asians during that same time period, enrollments increased 44.7% and 116.4%, respectively. In light of increasing student diversity and calls for greater productivity, the need for centralization, standardization, and high degrees of specialization no longer made as much sense as in the past. As individual schools within a district began to acknowledge their distinct profiles and cultures, they found being part of a highly centralized bureaucracy restricted their ability to fashion remedies for the problems confronting them. In fact, from school to school within the same district, perceptions of central problems might be markedly different. This is reflected in the fact that intra-district differences in student achievement are often more marked than inter-district differences (Monk, 1990).

Similar problems of organizational rigidity as an impediment to productive change were being addressed in the industrial sector of our society during the same period. Peters and Waterman (1982) in their book, *Search for Excellence*, found that 'excellent' corporations had begun to 'chunk,' i.e., break themselves into smaller, more flexible, organizational units that could respond rapidly to changes in customer demand. Educational reformers and school officials borrowed heavily from Peters and Waterman's (1982), as well as from Demings's (National LEADership Network study group on restructuring schools, 1993) ideas about Total Quality Management (TQM), and began moving towards site-based managed (SBM) schools that encouraged more attention to local needs and greater participation in decision-making.

SBM schools were introduced to re-establish some of the community participation formally enjoyed by the common school. In Figure 1, the SBM school, like the centralized school, remains on the organizational side of the community-organization continuum, but differs from the centralized school in that it no longer pursues similarity-based solidarity as its primary purpose. The SBM school is an organizational attempt to promote contiguity-based solidarity.

Theoretically, SBM shifts control from the central office to the school building. Although a formal organizational structure still prevails, formalized agreements for educating students occur at the local level. By pushing key decisions, including resource allocation, from the central office down to the school site, school officials, teachers, parents, and other constituents of the community have a

chance to address the unique and diverse needs of the community's youngsters.

Initiatives tied to site-based management include: (1) mandating parent and teacher participation in school-based planning and decision making; (2) relaxing or removing rules that inhibit efforts to achieve learning goals; (3) urging the state legislature to consolidate certain categorical aid programs to provide greater flexibility in educational programming; (4) requiring the development of individual school education plans and local standards of excellence; and, (5) seeking means by which parent choice is increased while at the same time avoiding socio-economic and racial segregation (MASED, 1993; NYSED, 1991). Taken together, these actions are intended to free up the potential that many believe has been dormant in the schools - potential that was impeded by the rigidity of the centralized school structure. Although both of these pieces of legislation have their critics, particularly among those who wonder aloud about the logical inconsistency of state-mandated local empowerment, and how community decision-makers can be held accountable, these innovative state initiatives allow local educators far greater autonomy than was the case with centralized schools. Moreover, it changes the existing organizational power structure from the central office 'running' schools to the central office 'serving' schools.

While one can mandate restructuring and require an organization to break into smaller units, desired results do not always follow. Organizations simply cannot respond at the same personal level as communities. By the year 2000, the U.S. will have 260,000,000 people, one of every three of whom will be of either African, Hispanic, or Asian descent. Ward (1992) reported that while the overall U.S. population ages 5 through 13 years would decline by 3% between 1990 and 1995, the African American population in this cohort would increase by more than 12%, and the Hispanic cohort would grow by almost 17%. Currently one of every six students in California was born in another country (Koppich, 1992). By the year 2020, it is projected that California's school-age population will be 46% Hispanic and 13.7% Asian, and this does not include the huge number of illegal aliens residing in that state (Thompson 1992, adapted from Thiel 1989). To further complicate matters, it is important to note that while the data we report identify ethnic and cultural groups such as Hispanic and Asian under unitary categories, these groups are themselves characterized by intracultural diversity.

Racial and ethnic changes are not the only factors having profound effects on the composition of America's school-age population and communities. As a result of legislative mandates and better diagnoses, new categories of disabilities have emerged. Data from the Sixteenth Annual Report to Congress: 1994, reveal that during the 1992-93 school year there were over five million children with disabilities aged from birth to 21. In addition to a rapid increase in the number of children with physical and emotional disabilities, there has been a steady increase over the past decade in the percentage of children who are socially and economically disadvantaged. Although federally funded social programs led to a decline in poverty during the 1960s and 1970s, this trend was reversed during the Reagan Administration in the 1980s, particularly among the young, and the number of children who were homeless or living in poverty in 1987 stood at an alarming 20% (U.S. Department of Education 1990, cited in Thompson 1992). These indicators suggest that in addition to confronting a more diverse student population in the future, our schools will also have to confront a growing number of 'at-risk' youngsters who have profound physical, emotional, social, and/or economic needs.

As a result of the judicial and legislative changes, we have more programs that are available to broader proportions of the population, to ensure all students have an opportunity to have their needs met in a variety of ways. One major weakness associated with these laws is that they rarely cross-reference or index similar laws to produce a combined effort in service delivery. This leaves the receiving agencies to compete for limited funds, and because funding has not kept up with the propagation of programs the intensity of the competition has increased ten-fold. It is only recently that it was announced in a local paper in Massachusetts that the Department of Family Services would no longer pay for custodial care in residential placements, forcing large groups of children back into homes unprepared to care for them. These laws are not necessarily inadequate in the wake of limited resources; what may be inadequate is the service delivery mechanism. Consideration needs to be given to program delivery without altering or weakening the intents or purposes of these legislative mandates or fragmenting the structure any more than is already evident.

Our response to meeting the needs of an ever-growing diverse student population is the introduction of the 'inclusive' school. If one accepts the idea that 'the whole village educates the child' - that education requires the collective effort of the whole community - then the concepts of community and inclusiveness move beyond the constraints imposed by the formal relationships of organization. Our 'inclusive' school model promotes and values solidarity based upon the complementarity - the *yin* and *yang*, if you will - of the similarity and diversity that exists within the context of the larger community. Using Maxwell's idea of contiguity-based solidarity, neither similarity nor diversity is seen as the sole over-arching goal. Instead, the 'inclusive' school values both and views community and diversity as compatible.

The writer believes that, through the development of inclusive schools, it is just this diversity that can help lead to the renewal of our public school system. The inclusive school should be viewed as an educational community that recognizes individual differences while simultaneously embracing solidarity of purpose. With time, these differences will become even more apparent as school populations become more diverse.

Our conception of the inclusive school relies on community-based management. Community-based management is realized when there is a genuine caring for others (Noddings, 1992) and there is a contiguity-based solidarity of purpose (Maxwell, 1994). Community-based management is defined as cooperation and collaboration between all entities that impact a student's life. The purpose is to create a seamless system in which the learning environment extends beyond the school doors, relying more on participation and involvement from the community members at-large. It is an opportunity for schools, agencies, businesses, and social and recreational services to become fully invested in each student's education.

The inclusive school deals with one student at a time when determining educational needs, but never loses sight of the fact that students need to fit within the broader context of a community. By highlighting the diverse talents and skills that individuals possess, and the ways in which those talents and skills meet the needs of others, diversity becomes an accepted and necessary part of the community. As a result, every youngster is recognized for his or her uniqueness, thus eliminating the need to use terms such as 'regular' or 'special' when speaking about children.

The difficult task is taking ideas, such as the ones proposed, and applying them to existing situations. Although the primary purpose of this paper is to introduce a theoretical basis and model for creating the inclusive school, in the next section, we will provide an applied case example to illustrate how an inclusive school might function.

Willett (forthcoming) demonstrates how differences might be

incorporated within the context of a classroom. In her study, she observed two classrooms in an international community. The first classroom was very traditional and teacher-directed. The students in the class were placed in groups, with each member of the group working on the same task. Exchange was limited to topics that were based on student similarity - differences in language proficiency, culture, and gender were muted. The second classroom was student-centered and parents, as well as other community members, were highly involved. New faces were always welcome in the classroom. Although students were grouped, these groupings were done primarily to highlight student differences and encourage dialogue for the purpose of gathering information and collective decision-making, rather than on the basis of ability. As a result, the students learned much about each other and united around these differences. The teacher, students, and parents described this classroom as 'close-knit.'

This conception of the inclusive school extends beyond classrooms but contains many of the same values provided in Willett's second example. The second classroom Willett discusses exemplifies the role that caring plays in community development. Community can only be realized when there is a genuine caring for others and both similarity- and contiguity-based solidarity of purpose. The teacher in the second classroom was effective in creating a community because she cared for her students and the people associated with them. She believed that all of these people were a part of her classroom.

The 'inclusive' school deals with one student at a time when determining educational needs, but never loses sight of the fact that students need to fit within the context of a community. By highlighting the diverse talents and skills individuals possess, and the ways in which those talents and skills meet the needs of others, diversity becomes an accepted and necessary part of the community. As a result, every youngster is recognized for his or her uniqueness.

## THE IMPACT OF LEGISLATION AND FUTURE DIRECTIONS

While the impact of legislation to serve the disabled in the United States has been very positive, it is beginning to out-live its purpose. Rather than providing for environments that are truly inclusive, it has created divisiveness and separation over the last two decades, essentially creating two separate educational systems. This arrangement is no longer effective. School reform efforts have been used to encourage educators to shift their focus away from past practices. Educational leaders in the U.S. are being challenged to create school environments that embrace and support increasingly diverse populations, while at the same time developing a shared set of goals and purposes to unify the community. Based on the above experience, schools need to shift from site-based management to community-based management. Beliefs guiding this shift include:

- a focus on the teaching-learning process that is child-centered;
- collaboration with multiple constituencies;
- willingness and ability to process a variety of information;
- commitment to maintaining open communication;
- encouragement of risk-taking and flexibility;
- appreciation and understanding of diversity and a commitment to equity;
- the use of reflection and inquiry as constant components of practice;
- the capacity to care for people that comprise the community;
- participation in community-based goal-setting activities;
- use of outcomes that are guided by systematic inquiry and moral deliberation.

To create successful inclusive schools, leaders and policy-makers must learn:

- that an exclusive focus on similarity-based solidarity is not only outmoded, but potentially damaging, in light of diverse populations;
- a sensitivity to how contiguity-based solidarity embraces diversity which, in turn, may affect students' self concept, esteem, and achievement;
- the skills and knowledge bases that will enable them to effect programming options to meet the needs of the diverse populations they will confront; and
- that legislation can no longer exist as separate silos and that rather more care must be taken by law-makers to cross-index legislation so students receive the benefit of a seamless service delivery model.

## CONCLUSION

Special education legislation in the U.S. has had the impact in the past of contributing to the creation of dual education systems, general and special, and to contributing to a litigious environment. It is clear that legislation that encourages segregated programs or dual education systems is no longer acceptable. More attention must be given to cross-indexing legislation with new and existing legislation, in effect creating a seamless service delivery model. To shift past educational paradigms, the inclusive school was introduced to maintain and expand the focus on contiguity-based solidarity through the implementation of the community-based managed school, and attempts to recapture the personal level of caring and commitment. Attitudes about ourselves, our comfort with diversity, and our skills in interpersonal problem solving are fostered in schools. Students look to their peers and adults within their community for guidance as they learn to relate to one another and to seek their own identity. Schools and their leaders are already in pivotal positions to teach about diversity within the context of solidarity. Legislation and school reform efforts should reflect these beliefs in order to not only benefit students with disabilities, but to benefit all students.

## *REFERENCES*


Boscardin, M. L. & Jacobson, S. (in press). The "inclusive" school: Integrating diversity and solidarity through community-based management. *Journal of Educational Administration*, 35 (5).

Boscardin, M. L., Moyer, R. & Scarpati, S. (1991). A reaction to *Honig* v. *Doe*: An analysis of Massachusetts' policy on the suspension and expulsion of handicapped students and its national implications. *High School Journal*, 74 (2), 88-97.

Callahan, R. E. (1962). *Education and the cult of efficiency*. Chicago: University of Chicago Press.

Carnegie Forum on Education and the Economy (1986). *A nation prepared: Teachers for the 21st Century* (The Report of the Task Force on Teaching as a Profession). Hyattsville, MD: Carnegie Forum on Education and the Economy.

*Commonwealth of Massachusetts Education School Reform Act of 1993*, Chapter 71.

Durkheim, E. (1893, 1984). *The division of labor in society*. New York: The Free Press.

Fuchs, D. & Fuchs, L. S. (1994). Inclusive schools movement and the radicalization of special education reform. *Exceptional Children*, 60 (4), 294-309.

Gartner, A., & Lipsky, D. K. (1987). Beyond special education: Toward a quality system for all students. *Harvard Educational Review*, 57(4), 367-395.

*Goals 2000: Educate America Act*, P.L. 103-227. (1993).

Holmes Group. (1986). *Tomorrow's teachers*. East Lansing, MI: Holmes Group.

Koppich, J. (1992). Demography, diversity, and dollars: Rethinking

school finance policy in California. In J. Ward & P. Anthony (Eds.), *Who pays for student diversity? Population changes and educational policy.* Newbury Park, CA: Corwin Press.

Mann, H. (1849). *Twelfth annual report of the board of education.* Boston: Dutton and Wentworth, State Printers.

Maxwell, J. (1994). Diversity and solidarity. A paper presented at the Annual Meeting of the American Educational Research Association, New Orleans.

Monk, D. (1990). *Educational finance: An economic approach.* New York: McGraw-Hill.

National Commission on Excellence in Education (1983). *A nation at risk: The imperative for educational reform.* Washington, D.C.: U.S. Government Printing Office.

National LEADership Network study group on restructuring schools (1993). *Total quality management: The leader's odyssey.* Washington, D.C.: U.S. Department of Education Office of Research and Improvement.

Noddings, N. (1992). *The challenge to care in schools: An alternative approach to education.* New York: Teachers College Press.

Odden, A., & Picus, L. (1992). *School finance: A policy perspective.* New York: McGraw-Hill.

Peters, T., & Waterman, R. (1982). *In search of excellence.* New York: Harper and Row.

Petrie, H. (1990). Reflections on the second wave of reform: Restructuring the teaching profession. In Jacobson, S. & Conway, J. (Eds.), *Educational leadership in and age of reform.* New York: Longman.

Sergiovanni, T. (1993). *Organizations or communities: Changing the metaphor changes the theory.* Invited address to Division A of Annual Meeting of the American Educational Research Association, Atlanta.

Skrtic, T. M. (1988). The organizational context of special education. In E. L. Meyen & T. M. Skrtic (Eds.), *Exceptional children and youth: An introduction.* Denver: Love Publishing.

Stainback, S., & Stainback, W. (1992). *Curriculum considerations in inclusive classrooms: Facilitating learning for all students.* Baltimore: Paul Brookes.

State of Vermont (1992). *Special Education Rules.* Montpelier, VT: Special Education Unit, Vermont Department of Education.

State Education Department of New York (1991). *School executives' bulletin.* Albany, NY: Office of Elementary, Middle and Secondary Education.

Taylor, F. W. (1911). *The principles of scientific management.* New York: Free Press.

Taylor, F., & Thiel, K. (1989). Providing services to children in need. In J. Kirlin & D. Winkler (Eds.), *California policy choices (Vol. 5).* Sacramento: University of Southern California, Sacramento Center, School of Public Administration.

The Commonwealth of Massachusetts (1992). *Chapter 766 Regulations.* Malden, MA: Massachusetts Department of Education.

Thompson, D. (1992). Special needs students: A generation at risk. In J. Ward & P. Anthony (Eds.), *Who pays for student diversity? Population changes and educational policy.* Newbury Park, CA: Corwin Press.

Tonnies, F. (1957 [1887]). *Community and society (Gemeinschaft un gesellschaft).* (Translated and edited by C. P. Loomis). New York: Harper and Row.

U.S. Department of Education, Office of Educational Research and Improvement (1990). Children in poverty 1960-87. In National Center for Education Statistics, *The condition of education.* Washington, D.C.: U.S. Government Printing Office.

U.S. Department of Education (1994). *Sixteenth Annual Report to Congress on the Implementation of Individuals with Disabilities Education Act.* Washington, D.C.: U.S. Government Printing Office.

Ward, J. (1992). The power of demographic change: Impact of population trends on schools. In J. Ward & P. Anthony (Eds.), *Who pays for student diversity? Population changes and educational policy.* Newbury Park, CA: Corwin Press.

Weber, M. (1947). *The theory of social and economic organization.* Translated by A. M. Henderson and Talcott Parsons; Talcott Parsons (Ed.). New York: Free Press.

Will, M. C. (1986). Educating children with learning problems: A shared responsibility. *Exceptional Children,* 52 (5), 411-415.

Willett, J. (forthcoming). *Creating community from difference: Growing up in an international community.* Creskil, NJ: Hampton Press.

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# DILEMMAS,CONTRADICTIONS AND DEMOCRACY: MODELS IN THE GOVERNANCE OF SPECIAL NEEDS EDUCATION IN ENGLAND AND WALES

**Alan Dyson**
Special Needs Research Centre, Department of Education,
University of Newcastle upon Tyne, Newcastle, UK

## CONTRADICTIONS AND SPECIAL NEEDS EDUCATION

In 1994 the English[1] Department for Education introduced a *Code of practice on the identification and assessment of special educational needs* (DFE, 1994) which contains the following statement:

> At the heart of the work of every school and every class lies a cycle of planning, teaching and assessing. These general arrangements in a school take account of the wide range of abilities, aptitudes and interests that children bring to school. The majority of children will learn and progress within these arrangements. Those who have difficulty in so doing may have special educational needs. (DFE, 1994, par. 2.1)

Some years earlier, Booth (1983) neatly turned such official definitions of special needs on their head: "Special needs," he argued, "are those to which schools currently do not respond" (p.41). What Booth's inversion highlights is an abiding characteristic of the English and Welsh - and, indeed, many other - education systems. Those systems are 'binary' in the sense that they seek to maintain at one and the same time a form of education which is 'regular', and which is deemed to be appropriate for the majority of children, and a form of education which is 'special,' and which seeks to meet the supposedly different needs of a minority of children. In its starkest form, of course, this binary system is evident in the quite separate regular and special school sectors still evident in many countries, including many parts of England and Wales.

This binary system is just one manifestation of a series of *contradictions*[2] which beset western education systems. On the one hand, those systems seek to maintain a form of education which is common to all children in order to achieve policy objectives such as the achievement of social equity, the development of an informed citizenry, or the creation of a skilled future workforce. In England and Wales, for instance, all children are legally entitled (and required) to receive an education between the ages of 5 and 16; the nature and broad aims of that education are prescribed by statute and the realization of those aims through a National Curriculum is also prescribed, and there is a presupposition that all children will, so far as is feasible, be educated in regular schools. On the other hand, in order to achieve their policy objectives efficiently and effectively, all education systems have to take into account that children are not homogeneous, and have to make arrangements to respond to the marked differences in learning characteristics which they display. The spread of those arrangements is considerable, and may extend from the minute-by-minute actions of teachers in their classrooms through to the creation of separate teaching groups, or indeed, separate types of school in terms of perceived pupil characteristics.

Such twin imperatives are contradictory in that they require national resources and policy to be directed simultaneously towards ends that are somewhat different. The introduction of the National Curriculum in England and Wales, under the 1988 Education Reform Act, is a case in point. In response to the need to establish a common education system that would (as they saw it) be more equitable, efficient and effective, the Conservative government introduced a curriculum that set out in considerable detail what was to be taught in schools, and made adherence to that curriculum legally binding. However, in response to their understanding of differences in children's needs and characteristics, the government made a series of compromises and permitted a range of exceptions. Hence, the National Curriculum stops short of setting out detailed lesson plans or prescribing how its content should be delivered; some flexibility is left to schools over what they teach for a small (though increasing) part of their timetabled time certain types of schools are exempt from its prescriptions; and there is provision for children 'with special educational needs' to have some or all of the curriculum 'disapplied'.

Striking a balance between these twin imperatives poses a set of recurrent *dilemmas* for both practitioners and policy-makers within western education systems[3]. Both the maintenance of a common system and the facilitation of responses to difference are held to be desirable policy goals. However, since one is in tension with the other, it is never easy to set a single, clear direction, and national policy in particular tends to veer between the imperatives with greater or lesser frequency as governments and/or priorities change. Again, the National Curriculum is a telling example. The curricular provisions of the 1988 Education Reform Act constituted a marked swing in the direction of a common system. However, six years later, the (still Conservative) government was already moving significantly in the direction of reduced prescription and increased flexibility, freeing up more time for teachers and schools to teach what they wished to teach in the light of their understandings of their pupils' needs (Dearing, 1994).

Seen from this perspective, the distinction which has tended to be drawn in western countries between 'special' and 'regular' (or 'mainstream') education is simply one more example - albeit a highly

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1 England, Northern Ireland, Scotland and Wales have education systems which are administered separately and differ from each other to greater or lesser degrees. The English and Scottish systems display the most differences from each other, whereas the English and Welsh systems display sufficient similarities for them to be regarded as one and the same. However, the pattern is further complicated by the existence in England and Wales of local education authorities (LEAs) which operate within a common national framework but nonetheless introduce a significant level of local variation.

2 I use the term 'contradiction' in a Marxian rather than logical sense (Burrell and Morgan, 1979) - that is, social phenomena are contradictory if they tend to develop in different directions which threaten to undermine the apparent stability of current sets of social arrangements. It may or may not be logical to talk about 'special needs education' (and there has been much debate on this matter), but my point is that special needs education and regular education make different and competing demands on national resources and seek to drive national educational policy in somewhat different directions.

3 See Berlak & Berlak (1981) and Winter (1989) for other applications of the concept of 'dilemmas' to education in general, and Norwich (1993), Lunt & Evans (1994) and Clark et al. (1995; 1997) for applications in the context of special needs education.

significant one - of how these dilemmas have been resolved. Historically, education systems have found it useful to differentiate between those children who can be educated adequately in regular schools as they are currently constituted and those who are seen to require some form of provision that is 'special' in being additional to or different from that made in regular education. At its starkest, this distinction leads to the establishment of quite separate regular and special school systems, though western education systems have arrived at a whole range of arrangements governing the relationship between special needs and regular education (Vislie, 1995)[4]

The special-regular distinction constitutes a powerful means of targeting resources, creating a focus for the development of professional expertise, and setting schools and teachers manageable tasks. However, it inevitably falls prey to the contradictions and gives rise to the dilemmas we outlined above. Special needs education, whether in special or regular schools, creates resource-demands, pedagogical styles, curricular priorities and forms of professional expertise which are more or less different from those within regular education. Policy-makers, therefore, have to find ways of maintaining and developing these sub-systems simultaneously. In so doing, they face some specific dilemmas:

- Should finite resources be allocated to special needs education at the expense of regular education, or vice versa?
- Should a common curriculum be devised which is broadly appropriate to the majority of pupils, or should there be a series of alternative curricula targeted at particular groups of children, including those with special needs?
- Should time and energy be directed towards developing a high level of specialized skills in a relatively small cadre of special educators, or towards developing a necessarily lower level of expertise amongst the much broader base of regular educators?

These and other dilemmas have significant implications for the nature of national and local education policy. In particular, they give rise to three features of such policy which differ across national systems and through which those systems can be interrogated and understood. Those features are: policy-level resolutions of dilemmas, procedures to arrive at resolutions at the case level, and mechanisms for resolving conflict in respect of those resolutions.

No education policy is possible without achieving some degree of resolution of the dilemmas outlined above: national systems (and local systems where, as in England and Wales, there is significant local variation) have to arrive at definitions of 'special educational needs', establish patterns of provision with an 'appropriate' balance between separate and common forms of schooling, formulate a curriculum which accommodates both the commonality and diversity of student - and so on. These resolutions have to be formalized into legislation, guidance and established practice and have to display some degree of uniformity across the system if policy goals are to be achieved. It is for this reason that we may regard them as policy-level resolutions. However, if they are to be meaningful, they will need to be applied at case-level; that is, decisions need to be made in respect of individual children as to what 'special needs' they do or do not have, what provision should be made for them, what curriculum they should follow and what resources they should receive. It follows that national policy also has to establish procedures for resolving these matters and to designate agents to operate these procedures.

It is in the very nature of dilemmas, of course, that their resolution cannot be achieved on a purely technical-rational basis. Rather, the ways in which dilemmas are framed and resolved are determined by the values and assumptions of those involved in the framing and resolution process. Insofar, therefore, that different groups and individuals, operating on the basis of different values and assumptions, are involved in those processes, it is inevitable that special needs policy will be contested. Parents, legislators, administrators, teachers and other professionals are all likely to see both national policy issues and the issues relating to individual cases in somewhat different ways. Not surprisingly, therefore, as many commentators have observed, both national special needs policy and its local implementation tends to be shaped by those groups and individuals who are able to exercise most power (Barton, 1988; Barton & Tomlinson, 1984; Fulcher, 1989, 1993; Tomlinson, 1982, 1985). If the inevitable conflicts are not to get out of hand, therefore, education systems need to establish some sort of conflict-resolution mechanism, either as part of the case-level procedures or somewhat distinct from them - perhaps, for instance, by giving disputants recourse to the law.

These three features constitute an illuminating framework for the analysis of national policy and of the legislative framework of national special education systems. Moreover, there is a very real sense in which they constitute a test case of how democratic processes operate within states. The necessity of responding to the needs and demands of minority groups at the same time as acting in the best interests of the majority of its citizens is, of course, both a fundamental dilemma for a liberal democracy and a test of its democratic claims. This is particularly so where - as in the case of children with special educational needs - at one and the same time the minority is highly vulnerable but its needs are costly to meet.

In the remainder of this paper, therefore, I propose to concentrate on how dilemmas have been resolved in the English and Welsh system. In particular, I wish to suggest that the recent history of that system offers two models of how that resolution process might be managed which display significant weaknesses from a democratic point of view. I shall also suggest that a third model is beginning, very tentatively, to emerge, and that this model may offer some important ways forward.

## THE ENGLISH AND WELSH SYSTEM PRIOR TO 1988

The conceptual and legislative framework of special needs education in England and Wales was established by the 1981 Education Act, which itself was based on the recommendations of the landmark Warnock Report (DES, 1978). Together, they created a system which is based on a broad concept of 'special educational needs'. Some 18% of the school population are held to experience some form of difficulty - learning, emotional and behavioral, physical or sensory - on the basis of which arises a 'need' for some form of special provision. For most of these children, this special provision is made in their regular school and the school's existing resources. For a minority, however, these resources are held to be inadequate and a formalized and multi-disciplinary assessment of their special needs is deemed necessary. This process leads to between two and four per cent of cases being issued with a 'Statement' - a legally-binding document specifying both the child's needs and the provision required to meet those needs. All children in special schools are issued with Statements, but children with significant special educational needs in regular schools can also be 'Statemented'. In all cases, the local

[4] There is now, of course, an international movement - reflected in England and Wales - in the direction of so-called 'inclusive' schooling, premised on the notion that regular schools can and should be organised in such a way as to be able to respond to the full diversity of children's learning characteristics and needs (Ainscow, 1994; Ainscow & Sebba, 1996; Clark, Dyson, & Millward, 1995; Pijl, Meijer, & Hegarty, 1997). I would suggest that inclusive schooling in this sense reframes the dilemmas with which we are concerned in important ways, but does not in any sense remove or dissolve them.

education authority (LEA) is responsible both for the assessment process and for ensuring the delivery of any special provision deemed necessary. Warnock and the 1981 Act swept away a system which had been based on a much narrower notion of 'categories of handicap'. In legislative terms at least, only the 2% or so of children who fell into these categories (educational sub-normality, maladjustment, physical handicap and so on) came within the purview of special education, and the only provision that could be made for them was in special schools. The new system was thus much more flexible in its definitions and made it much easier to make and protect provisions for children with special educational needs in regular schools. Not surprisingly, therefore, Warnock and the 1981 Act are often seen as marking a watershed in the post-war history of special needs education in England and Wales. However, it is important to acknowledge that they also left unchanged many fundamental features of the system: the commitment to special schooling, the notion of different types of need (even if they were no longer regarded as categories of handicap) met through different forms of provision, the central role of the LEA in assessment and provision, and so on. Moreover, there must be doubts as to whether the Act broke radically new ground or simply formalized changes that had been under way for many years. Many mainstream schools, for instance, already made some form of special provision for some of their students and a few already integrated students who had been, or might otherwise have been, placed in special schools (see, for instance, Jones, 1983).

There is, therefore, a case to be made for agreeing with those who see the series of changes introduced in the late 1980s and early 1990s - and, in particular, the 1988 Education Reform Act - as a divide that is at least as significant as that marked by the 1981 Act, and perhaps even more so (Bines, 1995; Bowe, Ball, & Gold, 1992; Lewis, 1995). Certainly, the 1988 Act had little explicitly to say about special needs education, while the subsequent 1993 Act and the Code of Practice adopted many of the 1981 Act's formulations in terms of definitions of special needs and procedures for identification and assessment. However, the 1988 and post-1988 changes introduced a shift in the governance of special needs education and hence in the way that dilemmas came to be resolved, both at the policy and the case level, that was more marked than anything introduced since the Second World War and that effectively constituted a new model of governance.

Prior to 1988, the central player in special needs education was the local education authority (Briault, 1976; Regan, 1979). Although definitions and categorizations of special needs were formulated in broad terms at national level, it was the LEA which determined the particular forms of special education in the locality for which it was responsible. The LEA was able to raise significant levels of funding to maintain its special education system; it was able to determine the balance between special schools, bases or units in regular schools, and support teams delivering services to individual pupils; it was able to determine policies and guidelines which all maintained schools in its area (which meant virtually all schools) were obliged to follow; and, above all, it controlled the access of individual pupils to special education and special services.

Certainly, central government had some sort of a stake in all of these matters. Moreover, schools could and did resist the will of the LEA, and the 1981 Act in particular gave parents certain rights in the decision-making process (principally the right to express an opinion on their child's needs and on how those needs should be met). However, the power of the LEA in respect of the detailed structuring and operation of special needs education was to all intents and purposes hegemonic (see, for instance, Armstrong (1995) and Sandow, Stafford, & Stafford (1987) on the power imbalances between LEAs and parents). Insofar as this level of power was seen as acceptable, this was largely because LEAs, as an arm of local councils, were democratically accountable to the local electorate. Beyond this, it may have been that special needs education was for the most part conceived as an apolitical, charitable venture, guided by a professional expertise of medics, psychologists and special educators that was beyond question (Corbett, 1996). Whilst, therefore, there might be disagreements about the most appropriate form of special education and disputes in individual cases, there was no widespread sense of endemic conflicts and power struggles within the system. The first substantial analyses of power within special education, for instance, did not begin to appear until the 1980s (e.g., Tomlinson, 1982), and even the 1981 Act failed to set the majority of parents in legal conflict with the special education professionals.

What this pivotal role of LEAs meant was that central government effectively devolved the resolution of dilemmas at case level and, to a significant extent, at policy level, to local policy-makers. Not only were substantive decisions as to the structure and character of special education taken by LEAs, but they and their officers managed the process of case-by-case resolution; indeed that became a major preoccupation of educational psychology services and certain education officers, despite continuing attempts to reconstruct the former in particular in a more supportive and advisory role (Gillham, 1978; Jones & Frederikson, 1990). Given that LEAs played a similarly central role in many aspects of education (and in the provision of services generally), the rationale for their involvement in special needs education as such tended not to be seen as either problematic or in need of explication. Nonetheless, it is possible to identify a number of assumptions that were implicit within this model:

- Special education was assumed to be consensual rather than conflicted; whatever conflicts arose could thus be managed within the framework of a single body - the LEA - and did not for the most part require recourse to law or any other form of external arbitration by disinterested parties (though there were exceptions, particularly following the 1981 Act).
- In particular, potential conflicts between the interests of individual children and the interests of the wider community were assumed to be minimal. A body elected to represent the interests of that community (the LEA) could, therefore, safely be left to oversee the rights of the individual.
- Special education was assumed to be the domain of rational decision-making informed by professional expertise. First doctors and then educational psychologists became the key gatekeepers of special education, making decisions on the basis of their supposed specialist expertise (Tomlinson, 1982, 1985).
- The available levels of resources were assumed to be adequate - at least in the sense that there were sufficient resources to meet any demands that might arise from special or regular education without leading to significant dissent or breakdown in either.

Whatever disputes, therefore, arose in practice between parents and LEAs and, even more so, between regular schools and LEAs, the basic assumption of the model remained intact - viz. that the fundamental dilemmas out of which such disputes arose were, in principle, able to be resolved in a rational manner, and that the LEA was the appropriate forum for that resolution.

## THE POST-1988 LEGISLATIVE FRAMEWORK

The reasons for the legislative changes of the late 1980s and early 1990s were many and varied. However, prominent amongst them was an ideological mistrust of LEAs on the part of the Conservative government of the time (Chitty, 1989). For a political party deeply committed to the notion of the free market and to the introduction of



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'market discipline' as a means of bringing about improvement in public services, LEAs were representatives of an archaic and inefficient system of governance. Their apparent democratic accountability concealed the dead hand of centralized planning which sought to impose a stultifying uniformity and lack of ambition on the education system. Far from working in the interests of the local community, they deprived individuals of the 'choice and diversity' (the title of the bill which became the 1988 Act) which would enable individual parents to seek out the best possible education for their children.

The 1988 Act, together with other legislative changes at about the same time, accordingly established an educational market place, compelling individual schools to compete against each other for pupils, and rewarding success with additional funding. By removing the LEAs' ability to determine school intakes, by handing over to schools the management of their own budgets and by even making it possible for schools to opt out of LEA control completely, the Act effectively reduced the power of LEAs whilst increasing that of individual schools. At the same time, the Act introduced a National Curriculum which placed control over what was taught in schools at the national rather than the local level. Even more significantly, the National Curriculum ensured that all schools taught the same things and therefore that the attainments of their pupils could be measured against the same standards, thus providing important information that would enable parent-consumers in the market place to choose between competing schools.

For such a major reform, the 1988 Act had, as I have noted previously, surprisingly little to say about special education (and even that was something of an afterthought). However, its impact on special education turned out to be significant in two particular respects:

- The increasing autonomy of regular schools, combined with the requirement on them to compete for pupils, led to various forms of marginalization and rejection of pupils with special needs (Bines, 1995; Imich, 1994; Mittler, 1993; Riddell & Brown, 1994; Vincent et al., 1994, 1995; Wedell, 1993). Resources which had previously been targeted towards such children now began to seep away as regular schools directed them towards their majority populations; exclusions from school and referrals to special education increased as regular schools sought either to reduce the numbers of pupils with special needs in their populations or to secure yet more resources for them; and special services began to decline as the proportion of overall resources which LEAs had to delegate to schools increased and their ability to maintain those services decreased.
- The alternative curricula which had characterized many forms of special education disappeared or were substantially reformed as the common National Curriculum took its place. Although this process was not without its benefits, it undoubtedly caused much angst amongst special educators, and the mismatch between the National Curriculum and the apparent needs of some children with special needs may have been a contributory factor in the processes of marginalization of special needs by regular schools (Spalding & Florek, 1989; Wedell, 1988).

In terms of the dilemmas which I outlined above, the Education Reform Act marked a shift in the resolution at national policy level - albeit an unwitting one - in the direction of the poles related to regular education. In other words, a system was introduced which responded to many of the perceived demands of the regular education system, but few of the demands of special education. The consequence for LEAs was serious, for whilst this shift took place in favour of regular education, they retained their old responsibility for managing special education and for arbitrating in conflicts at the local and case level. Faced with a rising demand from increasingly autonomous regular schools, coupled with decreasing control of resources, policy and curriculum, they were in serious danger of being unable to manage the system at all. As reports began to emerge of children being inappropriately educated or, indeed, being left uneducated, and as demands for additional resources seemed to be spiralling out of control, there was a real possibility of major failures of the special education system (Audit Commission & HMI, 1992a and b; Mittler, 1993; Wedell, 1993).

The response of central government to this situation is illuminating. Rather than strengthening the LEA and returning to something like the pre-1988 system, the government introduced an Act (the 1993 Education Act) and an accompanying Code of Practice (DFE, 1994) which adhere closely to the spirit of the 1988 Act and thereby establish a model of governance in special education which is significantly different from that which had previously prevailed. The 1993 Act and the Code introduced or further developed a series significant changes:

- They specified in some detail the respective responsibilities which regular schools and LEAs have for special needs education, calling upon inspection and other accountability mechanisms to enforce those responsibilities. This was a particularly significant development in respect of regular schools, whose special needs responsibilities had traditionally been regarded as very much a local matter.
- They specified a series of 'stages' of assessment and provision for pupils with special needs. Effectively, these set out criteria for determining the points at which additional resources should be deployed, first by regular schools, and then by LEAs.
- They made regular schools accountable for the additional funding they receive in respect of special needs, requiring them to declare how that funding is used.
- They made schools accountable not simply for the delivery of the National Curriculum to pupils in general, but for the formulation of specific plans for making the curriculum accessible to individual pupils with special needs.
- They specified the rights of parents, encouraging them to exercise those rights, and providing a legal mechanism (in the form of Tribunals) whereby this can happen.
- They made schools accountable for their special needs provision to the parent body as a whole, requiring governors to adopt a special needs policy and to report on its implementation annually to parents.

These changes are presented in a rhetoric of rights, responsibilities and entitlements, and certainly have the effect, in some cases, of ensuring that special educational provision for particular children is protected (Dyson, Lin & Millward, 1996, in press). However, our concern is with the way in which legislation seeks to resolve the dilemmas of special education at policy level and seeks to establish mechanisms and processes for the resolution of those mechanisms at case level, and it is these issues to which I now wish to turn.

## THE POST-1988 MODEL

In view of the omission of special needs issues from the 1988 Act and the time-lag between it and the 1993 Act, it seems unwise to regard the legislative framework which now underpins special education in England and Wales as entirely the result of careful strategic planning. Nonetheless, it is possible to detect beneath its surface an implicit model of governance. That model is very different from the one which underpinned the pre-1988 system. First, it is evident that the loss of power suffered by LEAs through the 1988 Act is sustained in the newer legislation. LEAs certainly retain a stake in the management of special education and can exercise a degree of

control over schools. However, schools are subject to other powerful controls which are unrelated to LEA policy. On the one hand, they are subject to parental pressure, and on the other they are subject to an inspection process and to the detailed prescription of the Code which are both effectively controlled by central government. Moreover, LEAs themselves are subject to a central prescription of their responsibilities, to the workings of the tribunals and to parental pressures, all of which are likely significantly to limit their ability to manage special education in accordance simply with their own wishes (Coopers & Lybrand, 1996).

This continued weakening of the LEA effectively creates a vacuum in the governance of special education. Whereas the pre-1988 model relied heavily on the LEA as the means whereby the dilemmas of special education came to be resolved at the level of local policy and of individual cases, the post-1988 model has no such mechanism in place. What seems to happen instead is that different parts of the dilemma-resolution process, and different poles of the dilemmas themselves, become distributed to different points within the overall education systems.

1. Central government becomes much more proactive in determining resolutions of special education dilemmas. Its determination of policy resolutions extends further down the system and into greater detail. The 'stages' of assessment and provision, for instance, effectively specify the boundaries between regular and special education in considerable detail, and set out the nature and extent of each. Prior to 1988, central government had simply specified a procedure for determining provision for a small minority of the special needs population (those with 'Statements of Special Need'), leaving it up to LEAs to specify the nature of that provision. Now, however, it specifies the form and content of special provision for the entire special education population.
2. Parents become the principal advocates for their own children. Whether LEAs choose to continue to act as the protectors of individual pupils or not, the parents of all children with special needs gain rights to be consulted at all stages of assessment and provision, and to challenge the decisions of both schools and LEAs.
3. Schools take on much of the responsibility for determining the form and content of special education at the case level. LEAs can continue to formulate special education policies and manage (often reduced) support services working in regular schools. They also have a clear stake in the provision made for the minority of children with Statements. However, for the majority of children with special needs, it is individual schools, working to national guidelines and responding to parental wishes, which must determine how resources are to be deployed and how the needs of their 'special' population are to be reconciled with the educational needs of the pupil population as a whole.

In addition to being distributed, the new model seems to be predicated on an assumption that stakeholders act on the basis of more or less enlightened self-interest. Parents are clearly expected to act in the perceived interests of their own children. Equally, regular schools seem to be expected to act as the competitive business units they now have become. There is no confidence that they will devote resources and energy to special education voluntarily, and hence they are constrained by regulation, accountability and pressure. Similarly, LEAs are not expected to act automatically in the interests of either individual pupils or regular schools. They have a limited budget to protect and many demands to meet from within it. Hence, they too are subject to regulation, inspection, litigation and pressure. This is a far cry from the pre-1988 assumption (whether justified or not) of the essential benevolence and community-interest of LEAs.

Moreover, this means that the new model of governance is essentially conflictual. As individual stakeholders pursue their particular interests, it is inevitable that they will conflict with each other; parents will want more than schools can provide; parents and schools will want more than LEAs can provide; schools will want to do less than central government requires - and so on. Without the monopolistic LEA to resolve such conflicts through rationality, expertise and benevolence, other conflict-resolution mechanisms are needed. These take the form effectively of the exercise of central government power. Although central government, in the form of ministers and their officials, cannot deal directly with the volume and complexity of potential conflicts, it has established a series of agents who can do this job on its behalf. The agents - inspectors, auditors, tribunal members - operate to a certain extent at arm's length from government. However, their principal task is to ensure that central government prescriptions, as embodied in guidance, regulations and legislation, are adhered to in each and every case. In this sense, the resolution of conflict in the new model is essentially legalistic in form.

## THE NEW MODEL IN ACTION

It is a little early for conclusive evidence to have emerged about how this new model is operating in practice. However, a number of studies have been carried out since the introduction of the Code of Practice in 1994, and a reasonably coherent picture is now beginning to emerge (Bines & Loxley, 1995; Coopers & Lybrand, 1996; Dyson, 1996; Dyson, Lin, & Millward, 1996, in press; Evans, et al., 1995; Lewis, Neill, & Campbell, 1996; Ofsted, 1996):

1. The new model is, as we have seen, inherently conflictual, centrifugal and legalistic. As individuals, groups and organizations pursue irreconcilable interests, there is considerable potential for breakdowns to occur both at the case and the systemic level. If parents win victories in the tribunals, for instance, LEAs might find their resources stretched to breaking point. If, on the other hand, schools and LEAs identify large numbers of children whose needs they cannot meet, and mobilize parents and school governors in the demand for additional resources, central government might in turn find its own resources and electoral credibility under pressure.
2. By removing the damping effect of the monopolistic LEA, the new model seems likely to exacerbate inequalities in the distribution of power. Different schools can exercise different degrees of power in respect of their LEAs. Large secondary schools, for instance, are capable of opting out of LEA control and inflicting severe damage on the LEA by doing so. They might conceivably receive more favourable treatment from the LEA than, say, small primary schools. Similarly, different groups of parents are differentially capable of exerting pressure on schools and LEAs. It is already apparent that those children who have the most articulate parents are the ones who receive most of the available resources (Riddell, Brown, & Duffield, 1994; Gross, 1996).
3. The principal mechanism for controlling these potentially destructive forces is the exercise of central government power. It seems that the more conflictual and centrifugal forces emerge in the system, the more government is forced to prescribe and legislate. The significant extension of government intervention which is embodied in the Code may simply be the first of a series of such extensions as government seeks to regain control of an increasingly unruly system.
4. By the same token, the presence of conflicts and dilemmas within the system which have not been resolved at national or local policy level seems likely to place an increased burden on individual schools and teachers, who cannot avoid some form of action in conflicted situations. Already, we have seen teachers exhorted to resolve the dilemmas of delivering a common curriculum to a diverse range of pupils through the highly problematic technique of 'differentiation' (Hart, 1992; Thompson & Barton, 1992). Similarly, the Code lays

detailed obligations on schools and teachers, but offers no convincing guidance as to how these obligations are to be met from schools' strictly limited resources. There is no reason to suppose that this process of devolving unresolved dilemmas down the education system will stop.

5. In the distribution of dilemmas and dilemma-resolution through the system, certain voices appear to have been lost. In particular, the new model equates the rights of parents with the rights of children. It is not at all clear that any individual or organization has the unequivocal duty within this model to speak on behalf of the child, and therefore the child's voice tends to have been lost (Davie & Galloway, 1996). Despite the problematic nature of the concept of children's needs, it is by no means impossible that in certain cases, the 'needs' of the child are being sacrificed to the wishes of their schools, their LEAs, the legal process and, even, their parents.

## TOWARDS A THIRD MODEL?

The dangers inherent in the post-1988 model are not difficult to see. In an essentially distributed, even centrifugal, model, the possibilities of one or other group exercising undue power within the system, of an over-bureaucratization as central government attempts to retain control, or even of a complete disintegration of the system, are significant. However, it is important not to romanticise the pre-1988 system. Despite the many virtues of democratically-accountable LEAs as the principal vehicle for conflict-resolution, such a 'centripetal' system also had its dangers. The reality of that conflict-resolution was frequently that the LEA exercised its considerable powers in order to over-ride the interests and to silence the voices of those who disagreed with it. The imbalance of power between parents and LEAs, for instance, has often been remarked upon (Armstrong, 1995; Sandow, et al., 1987), but there was an equal imbalance between LEAs and schools. Indeed, some would argue that the attempts by LEAs to impose their will on schools had substantially detrimental effects on the ability of schools to work creatively in the interests of children (Thomas, 1992). Furthermore, it is not at all evident that the accountability of LEAs to a local electorate was complete. Not only do local elections in England and Wales generate minimal interest and participation, but the unit of accountability - an entire city or shire county - is so large as to make it difficult for the interests of small minorities to be represented or heeded. It is not entirely surprising, therefore, that the opposition Labour Party, which shares none of the Conservatives' ideological mistrust of local authorities and which, indeed, controls a majority of them, nonetheless is not at the time of writing proposing a return to the *status quo ante* 1988 (Labour Party, 1995).

Indeed, it would appear that in certain quarters, there is an attempt to develop a third way between the centripetal pre-1988 model and the centrifugal post-1988 model. Some schools, for instance, are resisting the post-1988 invitation to compete against each other in an educational market place, particularly in respect of special needs provision. Instead, they are beginning to work together in 'clusters' wherein groups of schools share financial, material or human resources in order to enhance their capacity to provide for the full range of children (Gains, 1994; Lunt et al., 1994). Such clusters arise out of a whole range of motivations, many of which are simply pragmatic or self-interested, and clusters appear, moreover, to have a somewhat tenuous existence. Nonetheless, they open up the possibilities of groups of schools defining for themselves communities which they will serve collaboratively rather than competitively and which will thus represent a half-way-house between the very large populations served by LEAs and the much smaller groups of 'consumers' which the post-1988 model encouraged schools to satisfy.

In some cases, the emergence of these clusters coincides with or is derived from a redefinition by LEAs of their roles. Realizing that they cannot hope to return to the command-and-control model of pre-1988, some LEAs have begun to reconstruct themselves around notions of partnership and community (Housden, 1993; McConnell & Stephens, 1994; Millward & Skidmore, 1995; Moore, 1993). The partnership notion stems from a recognition of the plurality of interest groups with which the LEA now has to contend. In particular, semi-autonomous schools and newly-empowered parents and parental organizations can no longer simply be overwhelmed by LEA dictat or obstructionism. Instead, they must be encouraged to work together with the LEA in a partnership of equals. A key notion in energizing this partnership is that of a community whose interests include, but transcend, those of particular interest groups. As Housden (1993) argues, the LEA as the representative of the community as a whole has a 'moral authority' which it must exercise to get the voices of the vulnerable and powerless heard amidst those of the powerful and well-resourced, the assumption being that the latter can indeed be persuaded to recognize this wider interest.

It is important not to exaggerate the extent to which such notions have embedded themselves in the practice of LEAs, or the degree to which they influence the behavior of sectional interests in a system which remains distributed and fragmented. Nonetheless, they do indicate both that the post-1988 situation is far from static and that there are possibilities for a new model to emerge which will overcome some of the difficulties associated with the previous two - although, no doubt bringing with it new problems of its own.

## SOME IMPLICATIONS: DEMOCRACY AND THE GOVERNANCE OF SPECIAL NEEDS EDUCATION

Skrtic (1995) has recently argued a cogent case for a necessary connection between issues in special needs education and issues in democracy. On the one hand, students with special needs, he argues, constitute test cases of how well the institutions of democratic societies respond to the diversity of the populations to whose interests they are supposedly established and maintained. On the other hand, the capacity of practitioners and policy-makers to engage with other groups in society in considering the implications of diversity, and their willingness continually to construct and reconstruct their responses to that diversity, are indications of the extent to which society is capable of sustaining genuinely democratic debate.

The analysis offered here tends in a somewhat similar direction. Because special needs education is seen as contradictory to regular education, it is also seen to pose dilemmas for practitioners and policy-makers. There is no single best solution to such dilemmas, only resolutions which are better or worse in accordance with particular sets of values and assumptions and which are accordingly advocated by one or other interest groups. The way a particular education system constructs its resolutions can be analysed in terms of the substantive policy resolutions that are achieved, of the dilemma-resolution mechanisms that are set in place at case level, and of the conflict-management mechanisms that are established to arbitrate between different interest groups.

Although 'democracy' is perhaps a more problematic concept than Skrtic acknowledges, there is a real sense in which the way a society sets about resolving these dilemmas is a test of its democratic credentials. It is, in particular, a test of how that society treats minority groups, how far it is prepared to deploy its resources in their interests, and how those interests are weighed against the interests of the majority. Viewed from this perspective, both the pre-1988 and post-1988 models in England and Wales were fundamentally anti-democratic. The former tended to concentrate power in the hands of a

local education authority whose accountability both to the community as a whole and, more especially, to particular interest groups within that community, was tenuous. The latter was - and is - anti-democratic in creating a distributed system where resolutions are reached as much on the basis of the strength of any particular interest as on any notion of equity or rights.

If there is a democratic way forward - and, it has to be said, it is by no means clear that such a way exists - then the evidence from our tentative 'third model' suggests that it must be based on an element which is conspicuously absent from the previous models: that element is a democratically-explicated notion of 'community' (Fielding, 1996). Such a notion itself has to comprise two principal elements: on the one hand, an acknowledgement that communities are pluralistic rather than monolithic, comprising individuals and groups with somewhat different interests; and, on the other hand, a commitment to a notion of 'community interest', that is, to the idea that the good of each is in some sense synonymous with the good of all.

Moreover, if the notion of community is to be more than mere rhetoric, then it seems probable that each level of the education system has to be both responsible for and accountable to the community as a whole (Ranson, 1994). If the delineation of community pre-1988 was too broad to be meaningful, and if the post-1988 delineation is largely absent, then any new model will need to delineate communities which are of a size with which particular levels of the system can interact meaningfully. This is no simple matter in a densely populated and highly-urbanized country where 'natural' communities with clear boundaries are few and far between. Nonetheless, it is not difficult to see how a system of 'nested' communities and community responsibilities might be created, with schools responsible for a particular 'catchment area', clusters of schools responsible for particular localities comprising groups of catchment areas, and LEAs responsible for co-ordination across a group of such localities. It is also not difficult to see how the participation of local communities in their schools might be increased both by formal changes in the nature of schools' governing bodies and by an increase in the informal links which schools have with parents and others in the wider community.

It would be naive to believe that such changes as these would in any sense 'solve' the dilemmas presented by special needs education; they would simply constitute a further attempt at resolving those dilemmas - but this time in line with avowedly democratic principles. Difficult as this task is, it is also, I suggest, one that is of the utmost urgency in many western democracies. In recent times, there has been a rising tide of anxiety in English schools about the problem of so-called 'disruptive' behaviour. Many teachers appear to believe that their pupils are becoming progressively more unmanageable, to the point where they are no longer obliged to teach them. In some cases, indeed, teachers have threatened to go on strike rather than teach certain pupils, with the consequence that these pupils have been excluded either from the school as a whole or from participation in regular classrooms. Contacts with researchers in other countries, such as Denmark, the Netherlands and Norway, suggest that this phenomenon may be by no means confined to England and Wales. A number of national systems, it appears, are approaching crises in respect of who it is that regular schools are obliged to educate and who, precisely, is responsible for those children who are most difficult and least immediately rewarding to teach. It is difficult to see how, without some revivified and democratized notion of community responsibility, such crises can be averted. The alternative is a future in which education systems over the next few years become increasingly fragmented, segregationist and inequitable. Such a future is too dire to contemplate.

***REFERENCES***


Ainscow, M. (1994). *Special needs in the classroom: a teacher education guide*. London: Jessica Kingsley Publishers/UNESCO Publishing.

Ainscow, M., & Sebba, J. (1996). *Cambridge Journal of Education. Special Issue*: Developments in Inclusive Education, 26(1).

Armstrong, D. (1995). *Power and partnership in education: Parents, children and special educational needs*. London: Routledge.

Audit Commission & HMI (1992a). *Getting in on the Act: Provision for pupils with special educational needs: the national picture*. London: HMSO.

Audit Commission & HMI (1992b). *Getting the Act together: Provision for pupils with special educational needs: A management handbook for schools and local education authorities*. London: HMSO.

Barton, L. (Ed.) (1988). *The politics of special educational needs. London*: Falmer Press.

Barton, L., & Tomlinson, S. (Ed.) (1984). *Special education and social interests*. London: Croom Helm.

Berlak, A., & Berlak, H. (1981). *Dilemmas of schooling: Teaching and social change*. London: Methuen.

Bines, H. (1986). *Redefining remedial education*. Beckenham: Croom Helm.

Bines, H. (1995). *Special educational needs in the market place. Journal of Education Policy*, 10 (2), 157 - 172.

Bines, H., & Loxley, A. (1995). Implementing the Code of Practice for special educational needs. *Oxford Review of Education*, 21 (4), 381-394.

Booth, T. (1983). Integration and participation in comprehensive schools. *Forum*, 25 (2), 40-42.

Bowe, R., Ball, S. J. with Gold, A. (1992). *Reforming education and changing schools*. London: Routledge.

Briault, E. W. H. (1976). A distributed system of educational administration: an international viewpoint. *International Review of Education*, 22 (4), 429-439.

Burrell, G., & Morgan, G. (1979). *Sociological paradigms and organisational analysis*. Aldershot: Gower.

Chitty, C. (1989). *Towards a new education system: The victory of the New Right?* London: Falmer Press.

Clark, C., Dyson, A., & Millward, A. (Eds.) (1995). *Towards inclusive schools?* London: David Fulton.

Clark, C., Dyson, A., Millward, A., & Skidmore, D. (1995). Dialectical analysis, special needs and schools as organizations. In C. Clark, A. Dyson, & A. Millward (Eds.), *Towards inclusive schools?* London: David Fulton.

Clark, C., Dyson, A., Millward, A., & Skidmore, D. (1997). *New directions in special needs: Innovations in mainstream schools*. London: Cassell.

Coopers & Lybrand (1996). *The SEN Initiative: Managing budgets for pupils with special educational needs: Management summary*. The SEN Initiative.

Corbett, J. (1996). *Bad-mouthing: The language of special needs*. London: Falmer.

Davie, R., & Galloway, D. (Ed.) (1996). *Listening to children in education*. London: David Fulton.

Dearing, R. (1994). *The National Curriculum and its Assessment: Final Report, December 1993*. London: School Curriculum and Assessment Authority.

Department of Education and Science (1978). *Special educational needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People (The Warnock Report)*. London: HMSO.

Department For Education (1994). *Code of Practice on the Identification and Assessment of Special Educational Needs.* London: DFE.

Dyson, A. (1996). *Managing SEN policy in Cleveland primary and secondary schools: Individual education plans.* Middlesbrough: Cleveland LEA.

Dyson, A., Lin, M., & Millward, A. (1996). The implementation of the Code of Practice: The role of special educational needs co-ordinators in schools: Interim findings. *In National Invitation Conferences: The Code of Practice - Two Years On*, London, September 26 1996 & York, October 2 1996.

Dyson, A., Lin, M., & Millward, A. (in press). *The role of special educational needs coordinators in schools.* London: DfEE.

Evans, R., Docking, J., Bentley, D., & Evans, C. (1995). *Special educational needs: Review of policy and practice in five authorities.* Roehampton Institute London Research Centre.

Fielding, M. (1996). Beyond collaboration: On the importance of community. In D. Bridges & C. Husbands (Eds.), *Consorting and collaborating in the market place.* London: Falmer Press.

Fulcher, G. (1989). *Disabling policies? A comparative approach to education policy and disability.* Lewes: Falmer Press.

Fulcher, G. (1993) Schools and contests: a reframing of the effective schools debate? In R. Slee (Ed.), *Is there a desk with my name on it? The politics of integration.* London: Falmer Press.

Gains, C. (Ed.) (1994). *Collaborating to meet special educational needs: Special issue of Support for Learning*, 9 (2).

Gillham, B. (Ed.) (1978). *Reconstructing educational psychology.* Beckenham: Croom Helm.

Gross, J. (1996). The weight of the evidence: Parental advocacy and resource allocation to children with statements of special educational need. *Support for Learning*, 11(1), 3-8.

Hart, S. (1992). Differentiation - way forward or retreat? *British Journal of Special Education*, 19 (1), 10-12.

Housden, P. (1993). *Bucking the market: LEAs and special needs.* Stafford: NASEN.

Imich, A. J. (1994). Exclusions from school: current trends and issues. *Educational Research*, 36 (1), 3-11.

Jones, N. J. (1983). Policy change and innovation for special needs in Oxfordshire. *Oxford Review of Education*, 9 (3), 241-253.

Jones, N., & Frederikson, N. (Ed.) (1990). *Refocusing educational psychology.* London: Falmer Press.

Labour Party (1995). *Diversity and excellence.* London: Labour Party.

Lewis, A. (1995). Policy shifts concerning special needs provision in mainstream primary schools. *British Journal of Educational Studies*, 43 (3), 318-332.

Lewis, A., Neill, S. R S J., & Campbell, R. J. (1996). *The implementation of the Code of Practice in Primary and Secondary Schools: A National survey of perceptions of special educational needs co-ordinators.* University of Warwick for the National Union of Teachers.

Lunt, I., & Evans, J. (1994). Dilemmas in special educational needs: some effects of local management of schools. In S. Riddell & S. Brown (Eds.), *Special educational needs policy in the 1990s: Warnock in the market place.* London: Routledge.

Lunt, I., Evans, J., Norwich, B., & Wedell, K. (1994). *Working together: Inter-school collaboration for special needs.* London: David Fulton.

McConnell, E., & Stephens, J. (1994). Oxfordshire schools in partnership. In S. Ransom & J. Tomlinson (Eds.), *School co-operation: New forms of local governance.* London: Longman.

Millward, A., & Skidmore, D. (1995). *Local authorities' management of special needs: A report to the Joseph Rowntree Foundation.* York: YPS.

Mittler, P. (1993). Special needs at the crossroads. In J. Visser & G. Upton (Eds.), *Special education in Britain after Warnock.* London: David Fulton.

Moore, J. (1993). How will the 'self-managing school' manage? In A. Dyson & C. Gains (Eds.), *Rethinking special needs in mainstream schools: Towards the Year 2000.* London: David Fulton.

Norwich, B. (1993). Ideological dilemmas in special needs education: practitioners' views. *Oxford Review of Education*, 19 (4), 527-546.

Ofsted (1996). *The implementation of the Code of Practice for Pupils with Special Educational Needs.* London: HMSO.

Pijl, S. J., Meijer, C. J. W., & Hegarty, S. (Eds.) (1997). *Inclusive education: A global agenda.* London: Routledge.

Ranson, S. (1994). Local democracy in the learning society. In S. Ranson & J. Tomlinson (Eds.), *School co-operation: New forms of local governance.* London: Longman.

Regan, D. E. (1979). *Local government and education (2nd. ed.).* London: George Allen & Unwin.

Riddell, S., & Brown, S. (Ed.) (1994). *Special educational needs policy in the 1990s: Warnock in the market place.* London: Routledge.

Riddell, S., Brown, S., & Duffield, J. (1994). Parental power and special educational needs: the case of specific learning difficulties. *British Educational Research Journal*, 20 (3), 327-344.

Sandow, S., Stafford, D., & Stafford, P. (1987). *An agreed understanding? Parent-professional communication and the 1981 Act.* Windsor: NFER-Nelson.

Skrtic, T. M. (1991). *Behind special education: A critical analysis of professional culture and school organization.* Denver: Love.

Skrtic, T. M. (Ed.) (1995). *Disability and democracy: Reconstructing (special) education for postmodernity.* New York: Teachers College Press.

Spalding, B. & Florek, A. (1989). Narrower focus, narrowed choices? *British Journal of Special Education*, 16 (1), 10.

Thomas, G. (1992). Local authorities, special needs and the status quo. *Support for Learning*, 7 (1), 36-40.

Thompson, D., & Barton, L. (1992). The wider context: a free market. *British Journal of Special Education*, 19 (1), 13-15.

Tomlinson, S. (1982). *A sociology of special education.* London: Routledge & Kegan Paul.

Tomlinson, S. (1985). The expansion of special education. *Oxford Review of Education*, 11 (2), 157-165.

Vincent, C., Evans, J., Lunt, I., Steedman, J., & Wedell, K. (1994). The market forces? The effect of local management of schools in special educational needs provisions. *British Educational Research Journal*, 20 (3), 261-278.

Vincent, C., Evans, J., Lunt, I., & Young, P. (1995). Policy and practice: the changing nature of special educational provision in schools. *British Journal of Special Education*, 22 (1), 4-11.

Vislie, L. (1995). Integration policies, school reforms and the organisation of schooling for handicapped pupils in western societies. In C. Clark, A. Dyson, & A. Millward (Eds.), *Towards inclusive schools?* London: David Fulton.

Wedell, K. (1988). The new Act: A special need for vigilance. *British Journal of Special Education*, 15 (3), 98-101.

Wedell, K. (1993). *Special needs education: The next 25 years.* London: National Commission on Education.

Winter, R. (1989). *Learning from experience: Principles and practice in action research.* London: Falmer Press.

20

# SPECIAL EDUCATION LEGISLATION AND POLICIES IN THE CONTEXT OF EDUCATION REFORMS: THE NEW ZEALAND MODEL

**David Mitchell**
University of Waikato, Hamilton, New Zealand

## INTRODUCTION

The theme of this chapter is that the relationship between special education policy, legislation and practice must be placed in the wider societal and educational contexts. In New Zealand, this involves giving consideration to the impact on special education of issues arising from public sector and education reforms, in particular contestability, choice, and decentralization and accountability. Of over-riding significance is the balance of power exercised by the central Government, and that exercised by individual learning institutions. This balance underwent considerable change in 1989 when significant reforms of education administration were put in place (Mitchell, 1993; Mitchell & O'Brien, 1994; Mitchell, 1996).

## OVERVIEW OF NEW ZEALAND'S EDUCATION REFORMS

In 1989, the administration of New Zealand's education system underwent major restructuring. In brief, these reforms, referred to as *Tomorrow's Schools* (Lange 1988), were characterized by a substantial devolution of responsibility and authority from the center to the individual learning institutions. The latter were to be governed by boards of trustees representing the local community, working within the framework of charters negotiated with the Ministry of Education, funded through bulk grants (not yet fully implemented) and monitored by an independent review agency. Intermediate-level Education Boards were abolished.

The restructuring that took place - and which is still unfolding - in New Zealand's education system manifests many of the features of public sector reform taking place in recent years in New Zealand and in many other Western countries. They reflect what Boston (1991, p.2) described as "an analytic framework grounded in public choice theory, managerialism and the new economics of organisations, most notably agency theory and transaction cost analysis." This framework includes the following features:

- advisory, regulatory and delivery functions are separated and undertaken by different agencies to prevent bureaucratic capture (this point also includes the notion of a 'funder-provider split' in which agencies responsible for funding services do not, themselves, provide direct services);
- public monopolies are reduced to a minimum and, wherever feasible, services provided by government agencies are privatized, contracted to private sector suppliers or, at the very least, made contestable;
- services are provided through a series of 'contracts' (or agreed relationships) in which an agent undertakes to perform various tasks on behalf of a principal;
- there is a shift from the use of input controls and bureaucratic procedures to a reliance on quantifiable output measures and performance targets; and
- management control is increasingly devolved.

New Zealand's education reforms have their ideological underpinning in the above and include the following key elements:

- the learning institution (for example, school or early childhood center) is the basic 'building block' of educational administration, with control over its educational resources to use as it determines, within overall guidelines set by the Minister of Education;
- the learning institution is run as a partnership between the professionals and the particular community in which it is located (boards of trustees with governance responsibilities are the mechanism for this partnership);
- the learning institution sets its own objectives, within the overall guidelines set by the Minister and within the context of a national curriculum (these objectives are intended to reflect the particular needs of the community in which the institution is located and were initially set out in the institution's charter which acts as a contract between the institution and its community, and the institution and the Minister);
- the Ministry of Education provides policy advice to the Minister, administers property, and handles financial flows and operational activities; and
- the Education Review Office carries out regular 'assurance audits' (to ensure conformity with statutory requirements) and 'effectiveness reviews' (to evaluate a learning institution's contributions to student achievement).

## SPECIAL EDUCATION REFORMS: THE FIRST WAVE

Within the above administrative arrangements, responsibility for learners with special education needs is dispersed among several different agencies, all under the general oversight of the Minister of Education. From the outset of the reforms, several non-negotiable principles were 'hard-wired' into legislation and related regulations which required schools to accept learners with special education needs. Thus, boards of trustees were charged with ensuring that their school's policies and practices would achieve equitable outcomes for all students. In a similar vein, schools were required to include the following goal in their charters: "To enhance learning by ensuring that the school's policies and practices seek to achieve equitable outcomes for students ... irrespective of their ability or disability" (Department of Education, 1989, p.10). Section 8 of the Education Act 1989 specified that "people who have special education needs (whether because of disability or otherwise) have the same right to enrol and receive education at state schools as people who do not." More recently, Section 57 of the Human Rights Act 1993 prohibited educational establishments from refusing or failing to admit a student with a disability; or admitting such a student on less favorable terms and conditions than would otherwise be made available, except where that person requires special services or facilities that in the circumstances cannot reasonably be made available. (What constitutes 'reasonable' in this clause has yet to be defined.) A further obligation was placed on schools through the National Education Guidelines (O'Rourke, 1993), which, *inter alia*, required each board of trustees, through the principal and staff, to analyze barriers to learning and achievement and to develop and implement strategies which would address identified learning needs in order to overcome such barriers. As well, The *New Zealand Curriculum Framework* (Ministry of Education, 1993) contained this statement:

> The school curriculum will recognise, respect, and respond to the educational needs, experiences, interests and values of all students: both female and male students; students of all ethnic



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groups; students of different abilities and disabilities; and students of different social and religious backgrounds. Inequalities will be recognised and addressed. All programmes will be gender-inclusive, non-racist, and non-discriminatory, to help ensure that learning opportunities are not restricted (p.7).

The Ministry of Education is responsible for ensuring that these principles are appropriately addressed in schools' charters, the Education Review Office for seeing that schools meet the objectives, and the Special Education Service (SES) for assisting schools in carrying out their obligations with respect to learners with difficulties in learning or development. As specified in the Education Act 1989, the prime function of the SES is to "provide advice, guidance, and support for the benefit of people under 21 with difficulties in learning or development." The SES was established as an independent government agency and employs specialist staff (e.g., psychologists, speech and language therapists, early intervention workers, hearing advisers) to provide 'free' advisory services to schools and parents, under a contract negotiated annually with the Ministry of Education. As well, it plays a major role in determining eligibility for access to special education resources and provides a comprehensive early intervention service.

The total special education budget for the 1996/97 fiscal year was $NZ188 million (approximately ($US130 million). This funding provided teaching resources for approximately 17,450 students, or 2.5% of the total primary and secondary school student population, and represented about 7% of the total expenditure on school education. Of those receiving special education, 9,800 had what are referred to as 'Section 9 Agreements', i.e., they had an entitlement under Section 9 of the Education Act to some level of special education teaching assistance. These students received their education in special schools or in regular schools from nearly 1,000 special education teachers. These teachers were employed by school boards of trustees to teach classes of students with special education needs or, in the case of some regular schools, to provide advice to regular class teachers from a cluster of schools who have learners with special needs in their classes. Special educators who work in regular schools generally occupy positions that are over and above the staff entitlement of those schools. Schools and classes for students with special educational needs are staffed on ratios ranging from 1:2-3 for students with severe disabilities to 1:15 for students with mild disabilities in secondary school 'experience classes'. For most special education provisions, the staff student ratio is around 1:8-10.

The distribution of students with special needs reflect the support accorded to inclusive education in New Zealand. Of the school students receiving special education in 1995, about 65% were enrolled in regular classrooms, 21% were in special classes or units attached to regular schools, while the remaining 14% attended special schools. Two other statistics provide further evidence of the importance of inclusive education in New Zealand: 71% of all schools have at least one special education student, and the number of special education students enrolled in regular classes increased by 12% from 1994 to 1995 (Davies, 1996).

In addition, the SES, with an annual budget of $41 million in 1996/97 (included in the $188 million), provides services for students with Section 9 Agreements and for other students with special education needs. In the year ended 30 June 1994, the SES was involved with 5% of the total population of school students and 3.8% of children enrolled in early childhood education centers (Stevens, 1995).

Up to 1996, there was one other major form of special education provision: a Special Education Discretionary Assistance funding scheme (SEDA) under which schools applied every six months for grants on behalf of individual students. For the most part, SEDA provided funding for schools to employ teacher aides to support children with special needs in the mainstream and it was usually related to carrying out the objectives of individual educational plans. Such was the pressure on this resource, that most of it went to support students with high and very high needs, with little being available for students with more moderate needs.

## SPECIAL EDUCATION REFORMS: THE SECOND WAVE

In 1995-1996 a new policy, *Special Education 2000*, was introduced. As expressed by the Government, the aim of this policy was "to achieve, over the next decade, a world class inclusive education system that provides learning opportunities of equal quality to all students" (Ministry of Education, 1996b, p.5). *Special Education 2000* has two major components: a set of policies and a new approach to resourcing.

In 1995, the Minister of Education released a set of *Special Education Policy Guidelines* (Ministry of Education, 1995). These *Guidelines* were recommended to the Minister by the Ministry of Education and on the advice of the National Advisory Committee on Special Education[1]. They are built around seven main principles, namely:

1. Learners with special education needs have the same rights, freedoms, and responsibilities as people of the same age who do not have special education needs.
2. The primary focus of special education is to meet the individual learning and developmental needs of the learner.
3. All learners with identified special education needs have access to a fair share of the available special education resources.
4. Partnership between parents and education providers is essential in overcoming barriers to learning.
5. All special education resources are used in the most effective and efficient way possible, taking into account parent choice and the needs of the learner.
6. A learner's language and culture comprise a vital context for learning and development and must be taken into consideration in planning programs.
7. Learners with special education needs will have access to a seamless education from the time that their needs are identified through to post-school options.

*Special Education 2000* introduced a new, two-pronged, approach to resourcing students with special education needs. In the first of these, in 1997 the SEDA funding scheme, as outlined above, was replaced by a Special Education Grant (SEG). This new grant is "primarily targeted towards students with moderate special education needs such as learning and behavioural difficulties" (Ministry of Education, 1996c, p.3), who are estimated to comprise 4-6% of students. All schools receive a SEG based on their total roll numbers and their decile ranking on a socio-economic index (with the amount ranging from $34.50 per student in low socio-economic status schools to $5.00 in high socio-economic status schools, and a total expenditure of $16 million in the 1996-97 fiscal year). Whereas the earlier SEDA was directed to particular students and was almost entirely used to employ teacher aides, the new SEG is not targeted at individual students and schools are free to use it in a variety of ways "to provide additional assistance and resources for students with special educational needs" (Ministry of Education, 1996c, p.5), "in ways that work for their particular school communities" (Ministry of Education, 1996b, p.8). For example, schools could employ part-time teachers to work with individuals or small groups in a class setting or on a withdrawal basis, provide professional development for teachers of

[1] The author is a member of this eight person committee.

children with special education needs, provide home-school liaison, or set up services within a cluster of schools.

The second change to resourcing students with special needs will involve the introduction, from 1998, of an individual entitlement resourcing scheme for the 2% of students identified as having 'high' or 'very high' level needs (Ministry of Education 1996c). Under this scheme, these students will have a guaranteed level of resourcing, irrespective of the type of school in which they are enrolled. This will transfer with students if they move to another school. The notion of high needs will be defined by "the amount of additional assistance the student needs in order to participate in and benefit from the school programme" (Ministry of Education, 1996b, p.7). At the time of writing (March 1997), descriptors of high needs are being developed and a system of national verification is being designed. What has been determined, however, is that categories based on disabilities will be replaced by ones based on 'support needs', with an emphasis on students' capacity to cope with the national curriculum.

The foregoing reflects the general thrust of the new approach to resourcing students with special needs, but as noted by the Ministry of Education (1996a), some key decisions relating to the individual entitlements for students with high needs are still to be made. As well as the descriptors, these include the criteria for determining eligibility to the individual entitlement, the level of that entitlement, the appropriate fund-holder of the individual entitlement (one agency, several agencies and/or school), the balance of the funding between the individual entitlement scheme and the SEG, and appropriate accountability measures.

As well as the articulation of policy guidelines and the modifications to resourcing, *Special Education 2000* will continue to ensure that specialist support and advice is available to all schools by maintaining a contract with the SES as a national co-ordinating agency and by the Ministry of Education continuing to provide special education teachers. The critical role of the family in making decisions with and for the child with special needs will also continue to be recognized, with an emphasis on their right to choose their child's school, the promotion of involvement through the individual education plan (IEP) process, and access to specialist support and advice, irrespective of location.

## ISSUES [2]

*Special Education 2000* raises a series of policy issues which bear closer scrutiny, in particular those to do with contestability, choice, and decentralization and accountability.

### Contestability

As noted earlier, one of the linchpins of public sector reforms is the notion that public monopolies are reduced to a minimum and, wherever feasible, services provided by government agencies are privatized, contracted to private sector suppliers or, at the very least, made contestable. Contestability is an economic term which is used to describe an environment in which an organization maintains an efficient and needs-driven operation through being exposed to actual or potential competition (Mitchell, 1993a, 1993b). It is seen as an essential component of an environment where a funder seeks to obtain the best value for its money from service providers. Over the past decade or so, successive New Zealand governments have been determined to eliminate or reduce entry barriers to state sector activities.

In the light of the principle of contestability, the Government's recent affirmation of the need to maintain a national special education system is significant, particularly in the case of the SES, given the recent history of moves to develop a scheme whereby schools would be funded to independently purchase the sorts of services provided by that organization (Mitchell, 1996). Now, under *Special Education 2000*, it is recognised that,

> with a small number of students with special education needs spread across a wide geographical area, provision of specialist advice to schools throughout the country can only be assured effectively by the continuation of a central coordinating agency and provider of services, and through the continued provision of special education teachers. (Ministry of Education, 1996b, p.9)

Prior to this policy shift, the notion of directly resourcing schools to enable them to buy the kinds of services provided by the SES had been an ongoing one. It was first raised in 1988 by the Taskforce which gave rise to the current education reforms (Taskforce to Review Education Administration, 1988) and in the document, *Tomorrow's Schools* (Lange, 1988), which envisaged that after an initial two year period institutions will be able to receive up to 100% of their special education funding to use in buying services from either the SES or other suppliers. In the event, this proposal and subsequent modified versions of it were not implemented as governments became aware of the flaws in applying the principle of contestability to this aspect of education. As noted by Mitchell (1993a, 1993b, 1996), past proposals to make the SES contestable have met with a barrage of rebuttals. These include the following:

- Without the economies of scale and other benefits of co-ordination, some services would be lost.
- If the individual school is funded to purchase special education services, pressure would be placed on parents who would have to present arguments for funds to their board of trustees or school principal if they wished to access special education services. Furthermore, a disproportionate number of parents who would be placed in this position are likely to be Maori and/or from lower socio-economic backgrounds - people who do not find it easy to negotiate with the education system for their children and who often lack strong advocacy on their behalf.
- There is a risk that if a special education resource is given to schools it may not be used for the purposes for which it is intended.
- Devising an appropriate formula to distribute special education funds in such a way as to take account of the varying number and needs of students with high needs across schools and to take account of rural areas will be problematic, to say the least.
- The continuity of services that learning institutions have available to them under a national provider, and the continuity of specialist support for students transferring from one school to another, would be jeopardised. If sharing of information and coordination of services does not take place among providers, this could lead to duplication, fragmentation and inconsistency.

It would seem, then, that the Government has now recognised that the disadvantages of contestability outweigh the advantages insofar as special education is concerned.

### Choice

One of the seven principles articulated in the recent Special Education Policy Guidelines included recognition of parents' rights to have their choice of educational placement for their child taken into account (Ministry of Education, 1995). This was reiterated in 1996 in the Ministry's briefing for the incoming Government when it was noted that an increasing proportion of parents are opting to have their children with high needs educated in regular classrooms, rather than in special schools or in special units in regular schools. While there has been a marked trend in this direction - as noted in the statistics

[2] Some of the material in this section has been published in Mitchell (1996).

on placements referred to earlier - and while the Education Act 1989 and the Human Rights Act 1993 gave parents the right to enrol their child with high needs in their local school, the reality has been that many such schools lack the resources, if not the goodwill, to accept such children. Furthermore, access to resources were tilted in favor of special schools. Now, with the imminent introduction of a transferable, guaranteed level of resourcing for a child with high needs, irrespective of the type of school in which the child is enrolled, *Special Education 2000* will go a long way towards facilitating parents' choice of inclusive education.

This policy extends to parents of children with high needs the right of consumer choice - one of the fundamental principles of recent education reforms. This concept is derived from 'public choice economics' and is justified mainly in terms of providing a market for education. As noted by Bines & Thomas (1994), the market approach to education is based on the beliefs that each school must be able to respond individually to consumer choices and that it is the cumulative effects of such choices, rather than overall planning, that should determine the future development of education provisions. In New Zealand, this 'invisible hand' of the market place was emphasised by The Treasury in its briefing to the incoming Labour Government in 1987, when it referred to the "self-steering ability inherent in society to reach optimal solutions through the mass of individual actions pursuing free choice without any formal consensus" (The Treasury, 1987, p.41).

From a wider perspective, however, choice is a two-edged sword and has the potential to disadvantage students with special education needs. As noted by Mitchell (1996), there are risks for such students in a market-oriented climate. There are several reasons why this might be the case. Firstly, the market will inevitably produce 'failing schools' (Lauder et al., 1994), particularly in low socioeconomic areas. This phenomenon is likely to impact most severely on students with special needs, especially those with mild to moderate learning difficulties and behavior disorders - which are more prevalent among children from low socio-economic homes. Secondly, in a competitive environment in which increasing weight may be given by parents to selecting schools with apparently high performances in academic attainment, there may well be disincentives to schools accepting students with special educational needs, particularly when they make disproportionate calls on expensive resources (Bines & Thomas, 1994). Thirdly, it should be noted that where parents of students with special education needs are able to exercise choice (sometimes with the encouragement of schools which, despite their legal obligations, indicate that they are unable or unwilling to cater for such students), there is some evidence that certain schools are becoming 'magnet schools' for such students. The author has anecdotal evidence that some New Zealand schools are gathering reputations for their ability to cater for students with special educational needs. As a result, parents are seeking out such schools. If this trend continues, it could well result in the aggregation of such students in numbers disproportionate to those which occur in the population as a whole. Given that *Special Education 2000* now distributes SEG funding for students with moderate learning difficulties on a *pro rata* basis, and does not take account of the actual distribution of such children, resourcing problems could well arise for these schools. Perhaps the market will eventually solve this problem!

**Decentralization and Accountability**

The recent move from a centrally administered discretionary fund available to some schools (SEDA) to a formula-driven approach to resourcing all schools (SEG) is reflective of Government's adherence to one of the central planks of the recent education reforms, namely decentralized decision-making. The administration of education in New Zealand has seen a major (but not total) redistribution of power away from the center to individual learning institutions (Mitchell, with McGee, Moltzen & Oliver, 1993). One of the principal reasons advanced for this shift taking place was that it would give parents greater power to determine the nature and direction of their children's schooling, in a partnership relationship with professionals, with decisions being made as close as possible to where they are carried out. A second - and some would say even more important - reason for decentralization lies in its intersection with accountability. Thus, the taskforce that proposed the current reforms argued that once decision-makers have control over the available resources, they should then be held accountable for what is achieved (Taskforce to Review Education Administration, 1988).

How, then, will the new system of resourcing fare in this climate? As yet, no clear accountability procedures have been developed to ensure that either SEG or the individual entitlement resources for students with special needs will be used exclusively for the benefit of such students. Unlike the previous SEDA, which was designated for particular children with six-monthly IEP-driven reviews, the SEG resource will go to schools for the benefit of undesignated individuals and with deliberately flexible ways in which it can be used. One possible mechanism for holding schools accountable for their SEG resource is by means of the three-yearly reviews carried out by the Education Review Office. These reviews include consideration of school's effectiveness and such matters as their elimination of barriers to learning. Now, with the new funding regime, schools cannot claim that they are not resourced to provide for children with moderate learning difficulties, although it is inevitable that many will complain that they are insufficiently resourced. Since the procedures for determining the individual entitlements for students with high needs are still being developed, it is premature to comment on the extent to which accountability procedures will be established, except to emphasize their importance.

Decentralization has had, or is anticipated as having, some negative consequences for students with special educational needs. It is therefore appropriate to evaluate the extent to which special education in New Zealand might be vulnerable to these problems, three of which will be outlined here.

Firstly, in several countries it has been noted that as a result of the lack of clear criteria as to which students should be defined as having special educational needs, there is variability among local education authorities (LEAs). In the UK, for example, the Audit Commission (1992, para 23) was critical of what it described as an "open-ended commitment to an ill-defined group", a situation which was creating a number of difficulties: (a) pupils with lesser needs were receiving extra help while pupils with greater needs were not; (b) the size of the group at whom funds were to be targeted was not known, making it difficult for the LEA to budget; (c) it was not clear to parents or schools at what stage they may be entitled to help for their child; (d) it was difficult to challenge an LEA which decides that a pupil's needs do not merit a statement; (e) it was difficult for the LEA to maintain a consistent approach when faced with pressure groups which may be advocating that greater priority be given to a particular group of pupils, even though they may have had lesser needs than other groups of pupils; and (f) the degree of variation in practice between parts of the country meant that the place where a child lived had an unreasonable influence on the likelihood of receiving the benefit of a statement. Until recently, a similar criticism could be advanced of the special education arrangements in New Zealand where there was a growing recognition that criteria for accessing special education resources were so outmoded they were being ignored and replaced by local criteria. For example, a committee set up to review special education recently reported that



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the funding of special education was a source of considerable concern (Ministry of Education, 1994), noting that the distribution of special education resources reflected historical decisions and that they were not spread equitably throughout the country. This led to the Ministry commissioning a review of special education criteria by Mitchell & Ryba (1994). Their report recommended the adoption of a comprehensive, national framework for ascertaining students' education support needs, ranging from those which could normally be expected to be met by a regular school within its existing resources, through to those which require alternative programs with high levels of additional specialized resources. The concern was to develop a model for determining ways in which education support services could be provided in an equitable, effective and economic manner. The recommended procedures focused on students' functioning levels and their education support requirements, with the aim of ensuring that adaptations be made wherever possible in regular education settings. These recommendations have subsequently been extensively modified, but the core ideas remain and are being developed. Now, with advances in the development of a set of national criteria for identifying students with high support needs, and the likely institution of a team of national 'verifiers', one might hope that the problems of within-country variation in access to special education resources will be minimized, if not entirely eliminated.

Secondly, there is a risk that unless there are strong safeguards at the center, individual schools could pursue their own idiosyncratic policies with respect to students with special educational needs. This could result in a lack of equity and an incoherent pattern of service provision across the country (Wedell, 1994). These undesirable consequences can be avoided by requiring that schools conform to central legislation and policy guidelines, with clear accountability procedures. New Zealand's strong legislative and policy framework, referred to in an earlier section of this chapter, might entitle one to expect that in the future schools will not be able easily to avoid their responsibilities to students with special needs, although the rather weak accountability procedures may lead to some abuses.

A third problem is the inadequacies of budgetary provisions for students with special educational needs in a devolved system. As Dimmock & Bain (1991) have pointed out in the Australian context, competition for resources within schools, in combination with the low levels of awareness about students with special education needs, could result in the education of such students being overshadowed by more compelling causes. UK writers have similarly noted that when funds are short, the competition for pupils, which is increasingly being built into the financing of schools, is putting the allocation of funds to meeting pupils' special educational needs at risk (Evans & Lunt, 1993; Lunt et al., 1994; Wedell, 1994). The extent to which this becomes a problem in New Zealand depends very much on the adequacy of the accountability procedures that are put in place as *Special Education 2000* settles down.

Accountability has three necessary conditions. Firstly, there must be standards or criteria against which an entity is evaluated. Secondly, there must be a mechanism or process for evaluating an entity's performance against such standards. And, thirdly, for a process of change to be instigated, where such is indicated, there should be some motivation and assistance available for the entity to improve its performance.

The New Zealand education reforms introduced a range of formal standards against which schools can be evaluated. Some of these are included in legislation (e.g., the Education Act 1989 and the Human Rights Act 1993), others are included in various documents which have regulatory force (e.g., the New Zealand Curriculum Framework and the National Education Guidelines), while still others are contained in documents which, while not regulatory, are authoritative (e.g., the Special Education Policy Guidelines). It is primarily the function of the Education Review Office (ERO), on behalf of the Minister of Education, to carry out evaluations of schools against these standards. There are various sanctions that the Minister can institute if a school fails to meet standards after due process has been exhausted. These include the dismissal of the board of trustees and the appointment of a commissioner to govern the school. Constitutionally, the community holds the board of trustees accountable for meeting standards, the board in turn holding the professional staff, through the principal, accountable. The community, in fact, plays a relatively weak role in this process, its sanctions largely being limited to the three yearly ballot box (Harold, 1992). Boards of trustees vary greatly in their vigilance over professional staff in schools, but some take their surveillance role quite seriously, even to the point of dismissing principals whom they find unsatisfactory.

Notwithstanding the strong legislative and regulatory framework outlined above, recent reports by ERO bemoaned the lack of specificity regarding criteria for ascertaining quality. The Office expressed the view that the legislation and regulations define minimum standards and basic requirements, but fail to establish requirements regarding the way in which school staff should treat children in their care. As stated in a recent report from ERO (1994), "It has generally been assumed that quality is a function of process rather than specified outcomes or results to be produced" (pp.11-12). In a similar vein, The Chief Review Officer noted in her annual report to Parliament for the 1992/93 year that, to date, "we have found that the key parties have not clearly defined the quality expectations they aim to meet either in terms of the delivery of education services or in terms of student achievement. In our view, this is a major challenge facing New Zealand education."

Without clear criteria of quality and a consequential lack of methodology for ascertaining its presence or absence, there are problems in holding schools fully accountable for their performance with all children, not least of which those with special education needs. In addressing the broader issue of accountability for standards, ERO recognised that it raises the question of whether it is appropriate to impose centrally determined standards of quality on a decentralized system which is premised on the notions of self-management and self review. It went on to note that "The nature of the current system of education administration suggests that schools should determine their own standards, reflecting a level of quality acceptable to them and the people they serve, within limits of acceptability determined by the State" (Education Review Office, 1994, p.14). The absence of outcomes-based accountability procedures for determining the extent to which students with special education needs are achieving desired goals must be considered a serious deficiency in the New Zealand special education system at present. It is timely that work be carried out to develop performance indicators of outcomes for such students.

## CONCLUSION

New Zealand provides an interesting case study of the impact on students with special education needs of public sector reforms in general and education reforms in particular. It is clear from the experiences of the first eight years of education reforms in this country that education policy makers must give careful consideration to the potential negative consequences for students with special educational needs of some aspects of education reforms. As noted in this chapter and by Mitchell (1996), the tenets of contestability, choice, decentralization and accountability, for example, while being sound principles in general, require some fine-tuning if they are to accommodate students with special educational needs. In the case of

decentralization, such students' interests must be protected by clear, enforceable national legislation or guidelines. The principle of accountability must be enforced in such a way that decisions at all levels - national and local - demonstrably contribute to enhancing the learning outcomes of students with special educational needs and do not have undesirable consequences. Similarly, the principle of choice must be implemented in such a way that it does not negatively impact on such students at a systemic level. Further, if parents of students with special educational needs are also to be given choice, then this should not be unduly constrained by a system of resource distribution favoring one option more than another. The principle of contestability in the area of service provisions for students with special needs and their families, too, must be modified, lest there is fragmentation and inconsistencies. The message is clear: ideological purity must sometimes give way to flexibility.

### *REFERENCES*


Audit Commission and HMI (1992). *Getting in on the Act: Provision for Pupils with Special Educational Needs: the National Picture.* London: HMSO.

Bines, H. & Thomas, G. (1994). From bureaucrats to advocate? The changing role of local education authorities. *Support for Learning*, 9 (2), 61-67.

Boston, J. (1991). The theoretical underpinnings of public sector restructuring in New Zealand. In J. Boston, J. Martin, J. Pallot & P. Walsh (Eds.), *Reshaping the state: New Zealand's bureaucratic revolution.* Auckland: Oxford University Press.

Davies, T. (1996). Transition from secondary schooling to post-compulsory education in New Zealand. Paper presented to APEID Special Education Seminar, National Institute of Special Education, Yokusuka, Japan, November 1996.

Department of Education (1989). *The charter framework.* Wellington: Department of Education.

Dimmock, C. & Bain A. (1991). Providing services to special needs students in a decentralised education system. *Australasian Journal of Special Education*, 15 (1), 3-9.

Education Review Office, (1994). *Good New Zealand schools.* National Education Evaluation Report Number 4. Wellington: Education Review Office.

Evans, J. & Lunt, I. (1993). Special education provision after LMS. *British Journal of Special Education*, 20 (1), 59-62.

Harold, B. (1992). *School-community relationships.* (D. Mitchell, Ed.), Report No.7. Hamilton: Monitoring Today's Schools Research Project, University of Waikato.

Lange, D. (1988). *Tomorrow's schools.* Wellington: Government Printer.

Lauder, H., Hughes, D., Waslander, S., Thrupp, M., McGlinn, J., Newton, S., & Dupuis, A. (1994). *The creation of market competition for education in New Zealand: An empirical analysis of a New Zealand secondary school market, 1990-1993.* Wellington: Ministry of Education.

Lunt, I., Evans, J., Norwich, B. & Wedell, K. (1994). Collaborating to meet special educational needs. *Support for Learning*, 9 (2), 73-78.

Ministry of Education (1993). *The New Zealand curriculum framework.* Wellington: Ministry of Education.

Ministry of Education (1994). *Final report of the policy implementation team on delivering special education.* Wellington: Ministry of Education.

Ministry of Education. (1995). *Special education policy guidelines.* Wellington: Ministry of Education.

Ministry of Education (1996a). *Briefing for the incoming Government.* Wellington: Ministry of Education.

Ministry of Education (1996b). *Special Education 2000.* Wellington: Ministry of Education.

Ministry of Education (1996c). *Special Education 2000: The Special Education Grant.* Wellington: Ministry of Education.

Mitchell, D. (1993a). Contesting contestability in special education: A critical analysis of special education policies in New Zealand. In Queensland Department of Education, *Social justice, equity and dilemmas of disability in education. Proceedings of international working conference, 1992.* Brisbane: Queensland Department of Education.

Mitchell, D. (1993b). Special education Down Under. In G. Upton and R. Michael (Eds.), *The Viewfinder: Expanding boundaries and perspectives in special education. Volume Two.* Reston, Virginia: Division of International Special Education and Services, Council for Exceptional Children.

Mitchell, D. (1996). The rules keep changing: Reforming special education in a reforming special education system. *International Journal of Disability, Development and Education*, 43 (1), 55-74.

Mitchell, D., with McGee, C, Moltzen, R. & Oliver, D. (1993). *Hear our voices: Final report of the Monitoring Today's Schools Research Project.* Hamilton: Monitoring Today's Schools Research Project, University of Waikato.

Mitchell, D. & O'Brien, P. (1994). Special education in New Zealand. In K. Mazurek and M.A.Winzer (Eds.), *Comparative studies in special education.* Washington, DC: Gaulladet Press.

Mitchell, D. & Ryba, K. (1994). *Students with education support needs: Review of criteria for admission to special education facilities and for the allocation of discretionary resources. Report prepared for the Ministry of Education.* Hamilton: School of Education, University of Waikato.

O'Rourke, M. (1993). National Education Guidelines, *The New Zealand Education Gazette*, 30 April 1993, 3-4.

Stevens, H. (1995). New Zealand: Provision of special education resources based on the differences of communities. Paper presented to APEID Special Education Seminar, National Institute of Special Education, Yokusuka, Japan, November 1995.

Taskforce to Review Education Administration. (1988). *Administering for excellence.* Wellington: Government Printer.

The Treasury (1987). *Government management brief to the incoming Government 1987. Volume II, Education issues.* Wellington: Government Printer.

Wedell, K. (1994). Introduction [to collaborating to meet special educational needs]. *Support for Learning*, 9 (2), 51-52.

# LEGAL RIGHTS FOR STUDENTS WITH DISABILITIES: INDICATORS OF LEGISLATIVE PERFORMANCE IN CANADA

**William J. Smith & William F. Foster**
Office of Research on Educational Policy, McGill University, Montréal, Canada

## INTRODUCTION

In the introduction to a recent policy monograph (Schweitzer, 1995), Easton, the series editor, states: "When Canadians ask 'What kind of report card should we give our schools?' it is difficult to get a clear answer" (p.7). However, that does not mean that policy makers are not actively engaged in the search for this elusive answer. Almost every province has initiated at least one means to assess the performance of its education system (McEwen, 1995). Much of this work has focused on the development of 'indicators' or 'proxy measures' of educational performance within some kind of accountability framework. Paquette (1995) summarizes the impact of these policy directions:

> The overarching issues in recent educational policy-making and related consultation documents across Canada are the perennial ones of excellence and equity. A context of shrinking government resources and strong accountability demands has ... forced increased attention to long-standing debate over the conflict and complementarity between these two central ideals of publicly-funded education. (p.27)

Elsewhere, we have argued that quality and equality are not incompatible goals and that educational policy can and should foster what we have called *e-quality schools* (Smith & Lusthaus, 1995). However, the neo-conservative argument that quality and equality are antithetical puts pressure on programs and resources for students with disabilities and other minority groups who have been excluded from and marginalized by the education system. (Self)advocacy for students with disabilities seeks rights, not charity; and not moral rights, but legal rights, those conferred by law (Beachell & Peters, 1990; Yell & Shriner, 1996). When various rights are built around a common theme, they can be thought of as a normative framework, a set of inter-related norms or standards which serve to support the ethos of the organizing theme, such as *equal educational opportunity* [EEO] (Jongbloed & Crichton, 1990; Turnbull, 1993).

EEO is based on a fundamental belief that all children regardless of race, wealth, ability, or other personal characteristics - deserve the benefit of quality educational services. It is a construct which has evolved over time and which is defined differently by various commentators. In this chapter, we assign EEO an expansive meaning to encompass the right to participate in and benefit from free public education, in contrast to the more narrow construct which views EEO as merely providing a 'starting chance' at education (Coleman, 1990; Philips, 1991).

Grounded in this minority rights perspective of EEO and mindful of other work we have been doing in relation to school performance indicators (Smith, 1997; Smith, Bordonaro, Sturge Sparkes & Travers, 1996), the Office of Research on Educational Policy (OREP) at McGill University has been engaged in the development of a normative framework for the analysis and monitoring of the rights of students with disabilities from an EEO perspective. This framework has been used to develop a national report card containing indicators of legislative performance of each Canadian province and territory[1] (Smith, 1994 [original study]; Smith & Foster, 1996a, 1996b [update]). The purpose of this chapter is to provide a brief summary of this normative framework, the methodology used to conduct the analysis, and the results of its application to legislation in Canada.

## THE NORMATIVE FRAMEWORK AND METHODOLOGY

The study was limited to legislative action on student/parent rights by governments respecting elementary-secondary education of 'school-age' students with disabilities as defined in each province/territory enrolled in public schools or being schooled at public expense. It excluded other policy instruments, other rights, other policy actors, post-secondary education, infants and adults, federal educational jurisdiction, and private schools, except as alternate public school placements. Given these parameters, our first task was to design a framework which would permit the data from each jurisdiction to be identified and classified in light of a set of legal norms. The development of this framework began with the search for appropriate EEO themes. We eventually developed a set of five EEO themes, which evolved from the empirical testing of the construct of EEO derived from a review of the literature. These themes as presently defined are presented in Table 1.

TABLE 1
*The Five Major Themes*

| Themes | Definition |
|---|---|
| **Non-Discrimination** | Equal protection and benefit of law without discrimination on the basis of disability. |
| **Access to Schooling** | Admission to elementary and secondary schooling at public expense. |
| **Assessment & Placement** | Assessment of special education needs and provision of appropriate placement. |
| **Service Delivery** | Provision of appropriate educational and disability related services. |
| **(Self)Advocacy** | Provision for self-advocacy by students with disabilities and for advocacy on their behalf by parents, at all stages of the process. |

The five themes can be seen as a way of thinking about the rights of students with disabilities. Non-discrimination and access to

[1] Canada is a federal state, with authority divided between the Federal Government and ten provinces. In addition, there are two territories, the Yukon and Northwest Territories, which have never been organized into provinces and which come under the authority of the federal government. According to the constitutional division of powers, education is all but an exclusive matter of provincial jurisdiction and the territories enjoy *de facto* autonomy in this field, due to blanket delegation of federal powers. Hereinafter, unless the context indicates otherwise, a reference to 'jurisdictions' or 'provinces' refers to the ten provinces and the two territories of Canada.

public schooling aim at equality of treatment and entrance to school. The next two themes focus on what happens in school and the final theme provides support through advocacy by students and parents. Conceptualizing EEO as a normative framework for guiding public policy respecting students with disabilities begins with an articulation of the values encompassed by this construct. In some instances, EEO will be fostered by providing students with disabilities with the same rights and benefits as those provided to other students, while in others, it will require the provision of a different treatment. Minow (1990) conceptualizes this issue as the dilemma of difference - the risk of reinforcing the prejudice associated with assigned difference, either by focussing on it or by pretending it does not exist. An appropriate policy framework for the provision of EEO to students with disabilities is essentially a means to reconcile this dilemma of difference.

On the basis of this overall framework, we developed a methodology in order to answer the following questions in relation to each of these EEO themes:

- What are the specific rights which define the theme?
- What are the legislative standards which the framework posits ought to be achieved?
- To what extent does each jurisdiction provide for such rights and standards?
- How do all jurisdictions compare in terms of the provision of such rights and standards?

We then devised a series of items (e.g. right to free public schooling) which, when taken together, represented the elements of the EEO framework which should be dealt with in law. (We recognized that not all elements of EEO policy can or should be dealt with in law; some are better dealt with by other means.) The analysis was conducted using an instrument consisting of these items, posed in the form of questions (e.g. "Is there a right to free public schooling?").

For each question, a series of possible responses was devised, each response providing for a *higher* or *greater* level of rights than the previous one. Various decision rules were determined to interpret the questions and distinguish between the different levels of rights. As shown by the sample items in Table 2, sometimes there are several possible answers, while in other cases, either the right is provided or it is not.

TABLE 2

*Sample Items from the Data Analysis Instrument*

| Q#/i# | Themes/ Items / Possible Responses |
|---|---|
| **1** | **Is disability included as a listed ground of discrimination?** |
| [0] | Disability not included |
| [1] | Some forms of disability excluded |
| [2] | Disability but not means to palliate a handicap included |
| [3] | Disability and means to palliate a handicap included |
| **6** | **Is voluntary affirmative action provided for?** |
| [0] | NO |
| [1] | YES |

There are a total of 57 items in the instrument. The highest response category in each item represents the standard expected by the normative framework. In some cases, we needed several items to deal with one right (e.g. the right to free public schooling was dealt with in separate items on universality, lower age limits, upper age limits, etc.). The separation was required to facilitate the computer tabulation of results. However, when we came to articulate the legislative standards, we eliminated this somewhat artificial separation and constructed a total of 25 standards, five for each EEO theme, which will be described in the next section.

Jurisdictions can thus be compared on the basis of their relative scores on individual items, legislative standards, the EEO themes and their overall performance on all items, standards and themes. It should be emphasized that no attempt has been made to weight the scores to reflect the relative importance of various items in the instrument. However, the analysis permits jurisdictions to be rank-ordered with respect to overall results, individual themes, etc., thereby providing indicators of their legislative performance in relation to the standards set forth in the framework.

The methodology and the data analysis instrument in particular have evolved in response to feedback from (self) advocates, researchers and practitioners, notably from a federally funded symposium held in Ottawa in June, 1995. In the original study and in the 1996 update, both the data set used and the preliminary analysis of the data were vetted with representatives of each provincial ministry of education. This provided assurance that the data set was accurate and complete and helped identify any additional case law which could be used to complement a reading of the legislation. The feedback on the analysis confirmed, in the vast majority of cases, the interpretation of the researchers. However, some differences of opinion remained. Moreover, in order to provide an 'audit trail' of our analysis, the study report contains a description of the methodology, the data analysis instrument and decision rules, a complete set of data tables and the text of the legislation on which the analysis was based.[2]

## CANADA'S LEGISLATIVE REPORT CARD

Below, we present the legal framework which applies in Canada, followed by the legislative standards for each of the five EEO themes introduced above (see Table 1). In each case, we introduce the theme and provide a listing of the legislative norms or standards in a table, which represent 'where we ought to be' in relation to the theme in question, followed by a report card as to 'where we are' nationally.[3] The report card for each theme contains a bar graph and ensuing discussion. Each bar on the graph represents one of the five standards which define the theme in question and the height of the bar indicates the sum of all the responses from all provinces to the items which define that standard. This graph shows the 'average score' for each standard on a percentage scale (1-100). In other words, when you add up the scores of all the provinces and divide by 12 you get the national average for that standard.

In Canada, education is all but an exclusive provincial matter. However, all actions and laws of both the federal and provincial governments are subject to the Canadian Charter of Rights and Freedoms [Charter] which contains a constitutionally entrenched guarantee of equality rights, with specific mention of physical and mental disability. In addition, each province has adopted some form of human rights legislation which applies to specified areas of activities within the jurisdiction in question. Education is generally provided in schools under the jurisdiction of locally elected school boards, which are creatures of provincial legislation. The main

[2] The study report (Smith & Foster, 1996a) and other related materials are available on the OREP home page on the World Wide Webb: HTTP://WWW.CEL.MCGILL.CA/OREP/

[3] This chapter contains only aggregate results for Canada as a whole, as space does not permit the inclusion of data for each province. The reader who is interested in the latter is referred to Smith & Foster (1966b).

provisions of provincial education law are found in an Education Act (or Schools Act) and accompanying regulations.

***Non-Discrimination.*** Non-discrimination standards, together with access standards, serve as a 'platform' for the exercise of more specific educational rights (Smith & Foster, 1994a). They are meant to ensure that students with disabilities are covered by human rights legislation and have appropriate means of redress at their disposal. The five standards for this theme are listed in Table 3. The national results for each of these standards are shown in Figure 1. As seen therein, Standard 1 receives a high score (75), while the others all fall in a narrow band within the middle range of scores (49-57).

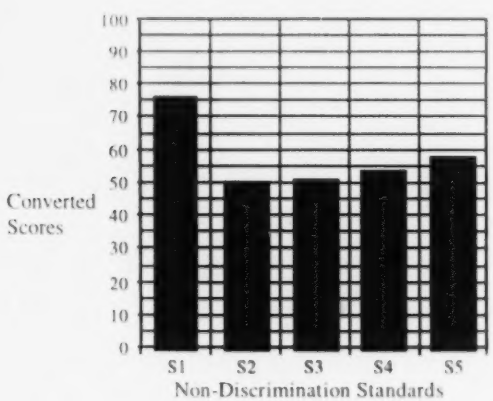
TABLE 3

*Standards for Non-Discrimination Legislation*

| Std# | Standard |
|---|---|
| S1 | Discrimination prohibited on the basis of disability and means to palliate a handicap and prohibition applies to public schooling. |
| S2 | Prohibition subject only to limits prescribed by law, has primacy over other legislation and binds Crown. |
| S3 | Both voluntary and sanctioned affirmative action provided for. |
| S4 | Human Rights Commission must investigate complaints and individual may submit complaint to board of inquiry. |
| S5 | Board of inquiry has broad remedial authority and there is a right to appeal decisions on questions of fact and law. |

Figure 1

*Total Scores for Non - Discrimination Standards*




*Standard 1*

All provinces but one at least partially meet Standard 1, the range of rights generally relates to whether or not education is specifically mentioned as an activity to which the prohibition against discrimination applies.[4] The one exception to this general trend is Nova Scotia, whose Human Rights Code does not include youth under the provisions dealing with non-discrimination.[5]

*Standard 2*

Not one province fully meets this standard. Although human rights legislation applies to the Crown (the State) in every province, only three provide for the primacy of such rights over other legislation without exception. Nine provinces allow for discrimination in circumstances where its prohibition would be 'unreasonable' or cause 'undue hardship.'

*Standard 3*

Recognizing that simply outlawing discrimination is not always enough to undo past wrongs, Standard 3 requires provision for affirmative action programs. Nine provinces provide for 'sanctioned' affirmative action programs - i.e., those authorized or ordered by an appropriate human rights body - but only three provide for 'voluntary' affirmative action - i.e., programs undertaken without such sanction.

*Standard 4*

While ten provinces provide for boards of inquiry to settle disputes, only eight *require* that complaints be investigated; in the other provinces, the human rights commission has considerable discretion regarding the investigation of complaints. Québec is the only province that allows an individual to submit a complaint to a board of inquiry where the human rights commission is unwilling to do so.

*Standard 5*

All ten provinces which provide for boards of inquiry, invest them with broad remedial authority, but there is a much wider range in terms of the right to appeal board decisions to the courts.

***Access to Schooling.*** The theme of 'Access to Schooling' is all about getting students 'through the school house door.' It can be thought of as the threshold of educational opportunity and is usually the first objective for students who have been denied admittance to public schools. The five standards for this theme are listed in Table 4. The national results for each of these standards are shown in Figure 2. Two standards (7 & 10) score very high (81 & 88); the others (6, 8 & 9) vary from middle to very low (52, 36, 19)

TABLE 4

*Standards for Access to Schooling Legislation*

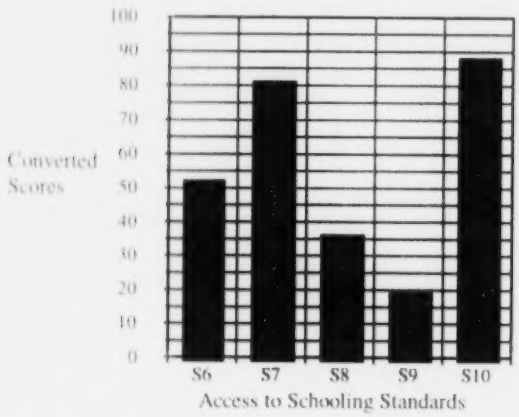
| Std# | Standard |
|---|---|
| S6 | Universal right to free public schooling from 5-18 years without exception for disability, with right for students with disabilities to early education from 3 years and to extended schooling until 21 years. |
| S7 | Duty to attend school from 6-16 years without exception for disability. |
| S8 | No expulsion or long-term suspension permitted without provision of alternative educational program. |
| S9 | Right to free school transport adapted for students with disabilities. |
| S10 | Right to barrier-free access to new/renovated schools according to *NBC, 1990*. |

[4] The importance of specifying the application of the prohibition to education is illustrated in *Berg v. University of British Columbia*, [1992] 3 S.C.R. 353.

[5] See W.J. Smith, "Equality in Nova Scotia schools: More 'fleeting privileges'? (1993) 3(2) CAPSLE Comments 1; for a contrary opinion, see A.W. MacKay & B. Grant, "Human Rights in Nova Scotia Schools: Protected or Neglected?" (1996) 5(4) CAPSLE Comments, 1.

Figure 2

*Total Scores Access to Schooling Standards*




*Standard 6*

Not one province completely meets this standard. Nine provide for 'zero reject' in law - i.e., universal free public schooling without exception for disability; two allow for exceptions in cases of severe disability, while the legislation in one province permits the exclusion of any student with a disability. All provinces provide for the right to education as of 5 or 6 years of age and all but one continue this right until 18 years. Only two provinces, Québec and New Brunswick, provide for early and extended schooling for students with disabilities; the others provide for neither.

*Standard 7*

Not one province completely meets this standard. All provinces provide for compulsory schooling; however, only seven make this provision with no exception for disability. In all the cases, the lower age limit for compulsory schooling is either 6 or 7 years, while the upper age limit is either 15 or 16 years.

*Standard 8*

In seven provinces, students may be suspended for long duration or expelled without any assurance of an alternative learning program. The converse is true in three provinces - no long term suspension or expulsion without an alternative program. In the remaining two, expulsion is prohibited but long term suspension without an alternative program is allowed.

*Standard 9*

Not one province meets this standard - i.e., free school transport adapted for students with disabilities. Although school transport is routinely provided in jurisdictions across Canada, this service is not generally provided as a matter of right. In eight provinces, there is no right to any form of school transport; in one province there is a general right to school transport and in the three remaining, this right is enhanced for students with a disability (waiver of distance threshold).

*Standard 10*

All provinces but one provide for barrier-free access to new schools or to major renovations of schools.

***Assessment and Placement.*** This theme, as well as the two which follow, provide for educational rights, i.e. what happens 'beyond the school house door' (Smith & Foster, 1994b). It spans a range of rights from the identification and assessment of the special needs of students with disabilities to providing them with an 'appropriate' placement. It is perhaps the most controversial of all five themes, as discussed briefly below (Bowlby & Peters, 1996; Bunch, 1994). The five standards for this theme are listed in Table 5.

TABLE 5

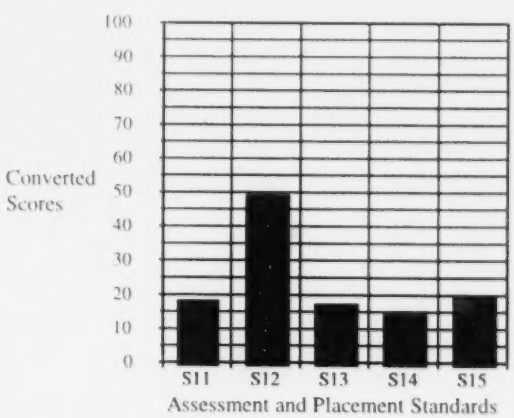
*Standards for Assessment and Placement Legislation*

| Std# | Standard |
|---|---|
| S11 | Right to non-discriminatory and multi-dimensional assessment, with periodic reassessment. |
| S12 | Right to each of the following: school within public school board, private schooling with State support or home instruction with support. |
| S13 | Right to each of the following: regular class placement, special placement or outside placement. |
| S14 | Consent required for each of the following: assessment, special placement and outside placement. |
| S15 | Right to third-party adjudication of assessment and placement decisions, with "stay-put" provision pending appeal. |

The national results for each of these standards are shown in Figure 3. Only one standard in this theme is in the middle range - Standard 12 with a score of 49. The other four are all very low scores of 14-19.

Figure 3

*Total Scores for Assessment and Placement Standards*




*Standard 11*

Only two jurisdictions provide for a right to both an assessment and periodic re-assessments. One provides for the right to an assessment without re-assessment, while another oddly provides for a right to re-assessment but not to the initial assessment. Finally, one province provides a right to ask a third party to determine whether an assessment should be undertaken. There is no province which specifically stipulates that assessments be non-discriminatory and only one where the assessment must be multidimensional.

*Standard 12*

Québec is the only province which provides a general right to choose one's school within a public school board, while in two others there is a right to choose one's school only in exceptional circumstances. There is a right to private schooling and home schooling in every province; however, in only three jurisdictions is there a right to State support for private schooling and in four for home schooling.

*Standard 13*

As alluded to above, placement remains a very controversial issue, as evidenced by several recent cases in Canada.[6] Five provinces provide for a right to regular class placement subject to a standard of 'practicability' - i.e., that the placement is deemed feasible under the circumstances; two provide for a right to ask a third party to determine whether a regular placement should be granted; the remaining five provide no rights at all for regular placement. The situation is similar respecting the right to special placement: two provinces with right subject to practicability standard, two with right to outside adjudication and seven with no right at all. Finally, with regard to special placement outside the school district, three provinces allow for third party adjudication of entitlement, while the remaining nine provide no rights in this regard.

*Standard 14*

The right to consent respecting assessment and placement remain the exception to the rule in Canada. In Ontario and the Yukon consent is always required for an assessment and it is likewise required for a special or outside placement unless a third party tribunal decides otherwise. In the Northwest Territories, consent is only required for an outside placement. In the other provinces, there are no rights respecting consent for assessment or placement.

*Standard 15*

Once again, the absence of rights is the rule. The Yukon provides for the right to third party adjudication of assessment and placement decisions, while Alberta only provides such a right to the latter. Ontario provides a right to assessment and placement decisions, but this right is subject to leave to appeal from a provincially constituted tribunal. Two other provinces provide for non-binding appeal mechanisms. Only Ontario provides for the right to 'stay put' pending the outcome of an appeal regarding placement. In the other seven provinces, there are no rights to appeal whatsoever.

***Service Delivery***. This theme is the heart of EEO rights for students with disabilities. Every other theme is in some way supportive of this one - the right to have a meaningful experience in and from school. The five standards for this theme are listed in Table 6. The national results for each of these standards are shown in Figure 4. As shown in this figure, there is considerable variance across the five standards. Standard 16 ranks in the high range (63), Standard 17 is in the middle range (44), while the remaining three vary from low to practically non-existent (29-4-11). Not one province fully meets any one standard from this theme.

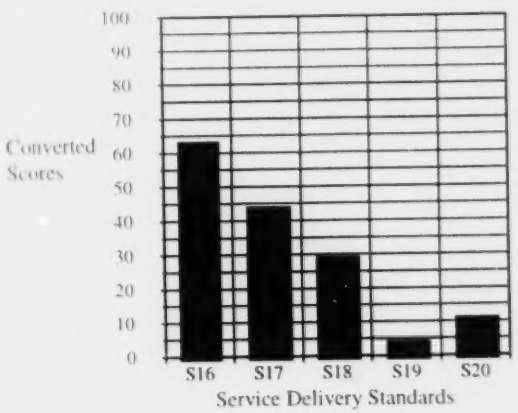
TABLE 6

*Standards for Service Delivery Legislation*

| Std# | Standard |
|---|---|
| S16 | Right to appropriate education for students with disabilities according to IEP, including general right to minority language education for students with disabilities. |
| S17 | Right to free instructional materials and to have regular educational services adapted to meet needs of students with disabilities. |
| S18 | Right to special educational services and personal care services for students with disabilities. |
| S19 | Consent required for special services. |
| S20 | Right to third-party adjudication of service delivery decisions. |

Figure 4

*Total Scores for Service Delivery Standards*




*Standard 16*

Five provinces provide for the right to an appropriate education according to the terms of an individualized educational plan [IEP]; one other province provides for the right to appropriate education but without reference to an IEP; the remaining six provide no right at all in this regard. Ten provinces provide for the general right to minority language education (i.e., English to minority in Québec and French to minorities in the other provinces). Québec provides for enhanced access to minority language instruction for students with 'serious learning disabilities.'[7]

[6] See *Eaton v. Brant County Board of Education* (1995), 22 O.R. (3d) 1, 123 D.L.R. (4th) 43 (Ont. C.A.), rev'g (1994), 71 O.A.C. 69 (Ont. H.C.), aff'g (19 November 1993) (Ont. Special Education Trib.); *Quebec (Commission des droits de la personne) and Commission scolaire regionale Chauveau*, [1993] R.J.Q. 929, 18 C.H.R.R. D/433 (Que. Human Rights Trib.); rev'd [1994] R.J.Q. 1196 (Que. C.A.); *Quebec (Commission des droits de la personne) and Commission scolaire Saint-Jean-sur-Richelieu*, [1991] R.J.Q. 3003 (Que. Human Rights Trib.); rev'd in part re execution of judgement pending appeal (1992), 94 D.L.R. (4th) 622, 44 Q.A.C. 130 (Que. C.A.); aff'd [1994] R.J.Q. 1227 (Que. C.A.).

[7] According to the *Charter of the French Language*, access to English schools is generally restricted to students whose father or mother received English elementary instruction in Canada. However, students with a 'serious learning disability' are exempted from the language of instruction requirements. The brothers and sisters of such children are also exempted.

*Standard 17*
Four provinces provide for the right to free instructional materials and the adaptation of regular services; four provinces provide only for free instructional materials, and four provide neither.

*Standard 18*
Québec provides a right for both special education services and for personal care services for students with disabilities; five other provinces provide only for special education services while the other six provide no rights to either.

*Standard 19*
The Yukon requires consent before special education services can be provided unless a third party tribunal decides otherwise. In the other provinces, there are no rights respecting consent to the provision of special services.

*Standard 20*
The Yukon provides for the right of third party adjudication of service delivery decisions and the Northwest Territories provides an in-house appeal mechanism; however, in the rest of the country there is no right to appeal service delivery decisions.

***(Self)Advocacy.*** This final theme is an all-encompassing one in that it deals with student and parental advocacy with respect to all of the themes considered to date. Various strands of research dealing with parental participation support the view that parents are a critical factor in the educational success of their children (Alper Schloss & Schloss, 1995; Garner & Sandow, 1995). This is particularly so for children at risk and those with special needs. In more recent years, we have also come to recognize the role that students themselves can play as self-advocates. The five standards for this theme are listed in Table 7. The national results for each of these standards are shown in Figure 5 which reflects a generally poor report card. Only Standard 24 regarding student records receives a high grade (71); once again, the remaining four vary from low to practically non-existent (4-33-29-19).

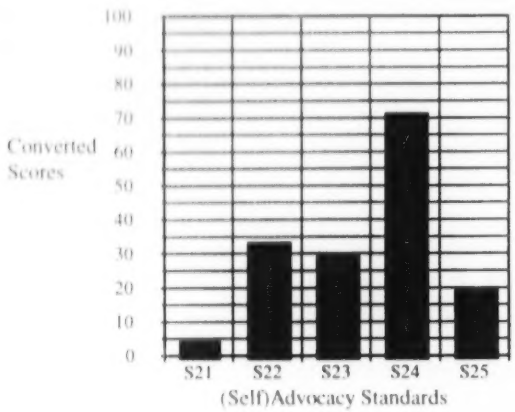
TABLE 7
*Standards for (Self)Advocacy Legislation*

| Std | Standard |
|---|---|
| S21 | School board level participation of students and parents, including specific participatory mechanisms for students with disabilities and their parents. |
| S22 | School level participation of students and parents. |
| S23 | School board required to involve students with disabilities and their parents in assessment and program decisions, as well as in monitoring student's progress. |
| S24 | Provision made both for the confidentiality of and student/parental access to student records. |
| S25 | General right to third-party adjudication of school board decisions. |

*Standard 21*
Not one province provides for the participation of students below the age of majority in general school board level advisory/decision-making bodies or those specifically dealing with special education. Québec confers both these rights on parents but not on students. Ontario provides parents with a right to participate in a school board level committee on special education but confers no general participatory right to them at this level. The other provinces confer no rights respecting the participation of parents at the level of the school board.

Figure 5

*Total Scores for (Self) Advocacy Standards*




*Standard 22*
The situation respecting school level participation of parents and students is more varied. Two provinces confer this right to parents and students; two to parents and students of majority age; two to parents alone. The remaining six provide no such rights at all.

*Standard 23*
Once again there is considerable variance across provinces. British Columbia and Québec confer the right to be involved in assessment and programming decisions to both students and parents, while British Columbia also provides such a right with respect to the monitoring of student's progress. Ontario provides for both of these rights to parents and students of majority age. Three provinces confer both such rights on parents alone; one province gives parents the right to be involved in assessment and programming decisions, but not monitoring, while one other province does the opposite.

*Standard 24*
Nine provinces expressly provide for the confidentiality of student records; three do not. Six provinces provide for both parental and student access to student records; three provide this right to parents and students of majority age; one to parents alone, and two provinces have no express provisions on this matter.

*Standard 25*
Seven provinces provide for a general right to appeal school board decisions through in-house procedures; the remaining five confer no rights in this regard.

## CONCLUSION

In the Introduction, we stated that the purpose of this chapter was to provide indicators of legislative performance respecting the provision of EEO rights of students with disabilities in Canada as a whole. Summarizing complex legal provisions in the form of indicators is a risky business at best, as the law cannot always be reduced to such simple terms. However, we believe that the 'proxy

measure' of performance presented in this chapter serves a useful purpose, namely to provide an 'at a glance' portrait of the extent to which the EEO rights of students are being provided for in legislation in Canada.

Each thematic summary has provided a set of indicators of the state of legislative performance in relation to the five standards which serve to define the theme in question. In each case we provided a graphic illustration of the general level of rights prevailing in Canada and a discussion of each individual standard. As we have seen, there is considerable variance from one standard to another. In this concluding section, we will briefly consider which standards are generally being met, which ones are more problematic and the implications of this analysis for policy makers and (self)advocates. Figure 6 shows the total scores for the standards of this framework regrouped by the five EEO themes. The two 'platform' themes score relatively high but even these only attain aggregate scores of 58 and 57. Assessment and Placement ranks the lowest at 22, with the remaining themes not much higher at 36 and 29.

Figure 6

*EEO Themes*

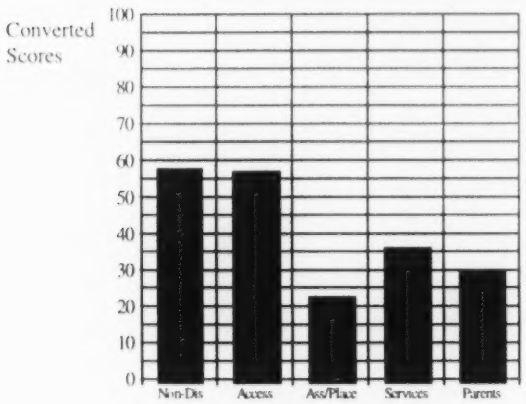



Figure 7 depicts the total score for all 25 standards, rank ordered from highest to lowest. As can be seen in this figure, the degree to which the 25 standards are being met varies from a high of 88 to a low of 4.

Although one might argue about dividing lines between high, middle and low scores, for purposes of discussion, we have divided the distribution as follows:

| | |
|---|---|
| *High* | Scores of 60 + (5 standards) |
| *Middle* | Scores from 40 to 59 (7 standards) |
| *Low* | Scores below 40 (13 standards) |

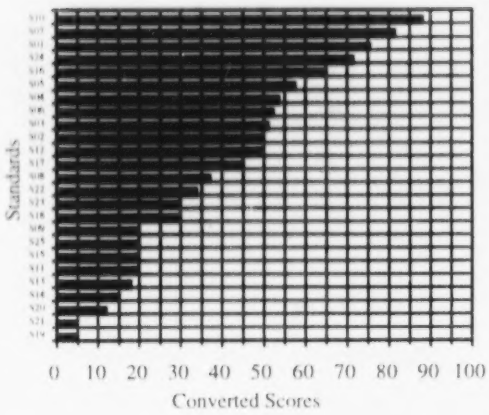
*Highest Scoring Standards*

Five standards score above 60%:

| | |
|---|---|
| Std 10: | Barrier-Free Access (88) |
| Std 7: | Duty to Attend School (81) |
| Std 1: | Non-Discrimination (75) |
| Std 24: | Student Records (71) |
| Std 16: | Appropriate Education (63) |

Figure 7

*Ranked Converted Scores of all Standards*




*Lowest Scoring Standards*

Nine standards receive scores of less than 20%

| | |
|---|---|
| Std 9: | Free School Transport (19) |
| Std 25: | General Appeal of School Board Decisions (19) |
| Std 15: | Appeal of Assessment and Placement Decisions (19) |
| Std 11: | Assessment (18) |
| Std 13: | Regular and Special Placement (17) |
| Std 14: | Consent for Assessment and Placement (14) |
| Std 20: | Appeal of Service Delivery Decisions (11) |
| Std 19: | Consent for Special Services (4) |
| Std 21: | School Board Level Participation (4) |

Fifteen years ago, when Clarence Smith (1980) surveyed the right to education of students with disabilities in Canada, he reported the following: "Handicapped children are rightless in Canada, so far as education goes. They have no right in any province to an appropriate education, and in half the country they have no right even to be in school" (p.373). When we conducted our analysis of these issues three years ago, there were three jurisdictions where the language of the Act could be interpreted to exclude students with severe disabilities and one where a general exclusion of students with disabilities was permitted. Six provinces made varying degrees of provision for an appropriate education and six had no such provision at all.

In 1996, when we conducted the legislative update, the only change in this situation was the amendment of the Ontario Education Act in order to, among other purposes, expunge references to 'hard-to-serve' pupils, leaving a total of three jurisdictions with exclusionary language in their respective Acts. The continued existence of such legislative provisions means that students with disabilities in these jurisdictions, or their parents on their behalf, could be forced to mount a *Charter* challenge to the legislation, just to have the right to enter the school house door, which we have argued is merely a platform right, upon which other more specific rights to education are built.

The aim of providing EEO to students with disabilities is not solely a matter of legislated rights. True equality of opportunity can be achieved only through the application of various policy instruments, including resource allocation, training and instructional programs. The context in which these policy choices are made is equally important. The demand for increased school performance

and accountability places negative pressure on the allocation of resources to those students who are not viewed as contributing to educational excellence. Finally, as Lusthaus (1991) says, attitudes must change, not merely public policies. However, in our view, legal rights are the basis for these and other changes in policy and practice. Rights are not the only answer to the barriers faced by students with disabilities but they are a critical means for moving from a charity mode to a minority rights mode. As eloquently summarized by Martha Minow (1990):

> There is something too valuable in the aspiration of rights, and something too neglectful of the power embedded in assertions of another's need, to abandon the rhetoric of rights. ... It [rights rhetoric] enables a devastating, if rhetorical, exposure of and challenge to hierarchies of power....(p.307).

If anyone doubts the importance of rights, one simply has to refer to the number of cases where students and their parents have been forced to apply to the courts to secure the recognition and exercise of both their right to non-discriminatory treatment and their right to education.

It was from this perspective that we began the task of constructing a normative framework for the provision of EEO to students with disabilities. The overarching aim of this work is to develop an ongoing monitoring system on the state of legislated rights for students with disabilities in Canada and promote dialogue among policy makers, advocates, educators, researchers and other interested groups. There is no doubt that this framework can be modified and improved but that is the challenge which all of us who are interested in this field of endeavour must face - to help shape, in Mittler's (1992) words, "a vision of the kind of future which we would like to see for disabled children, a future to which they are entitled as a matter of right" (p.125).

### *REFERENCES*


Alper, S., Schloss, P.J. & Schloss, C.N. (1995). Families of children with disabilities in elementary and middle school: Advocacy models and strategies. *Exceptional Children*, 62 (3), 261-270.

Beachell, L. & Peters, Y. (1990). Omnibus legislation: A strategy for the Nineties. In R.L. Cholewinski (Ed.), *Human rights in Canada: Into the 1990s and beyond*. Ottawa: University of Ottawa, Human Rights Research and Education Centre.

Bunch, G. (1994). Canadian perspectives on inclusive education from here to there: The passage to inclusive education. *Exceptionality Education Canada*, 4, (3/4), 19-35.

Bowlby, B. & Peters, C. (1996). Impact of the *Human Rights Code* and the *Charter of Rights and Freedoms* on the pedagogical debate on inclusion. In Foster, W.F. (Ed.), Education in transition: Legal issues in a changing school setting (Proceedings of the Sixth Conference of the Canadian Association for the Practical Study of Law and Education, Ottawa, April, 1995 Châteauguay QC: Lisbro.

Coleman, J.S. (1990). *Equality and achievement in education*. Boulder CO: Westview Press.

Garner, P. & Sandow, S. (Eds.). (1995). *Advocacy, self-advocacy and special needs*. London: Fulton.

Jongbloed, L. & Crichton, A. (1990). Difficulties in shifting from individualistic to socio-political policy regarding disability in Canada. *Disability, Handicap & Society*, 5 (1), 25-36.

Lusthaus, E. (1991). Drastic actions: The results of viewing people as less than human. *Developmental Disabilities Bulletin*, 19 (1), 28-48.

MacKay, A.W. & Grant, B. (1996). Human rights in Nova Scotia schools: Protected or neglect6ed? CAPSLE Comments, 5 (4), 2-4.

McEwen, N. (1995). Introduction: Accountability in Education in Canada. *Canadian Journal of Education*, 20 (1), 1-17.

Minow, M. (1990). *Making all the difference: Inclusion, exclusion and American law*. Ithaca NY: Cornell University Press.

Mittler, P. (1992). International visions of excellence for children with disabilities. *International Journal of Disability, Development and Education*, 39 (2), 115-126.

Paquette, J. (1995). Major trends in recent educational-policy-making in Canada: Refocusing and renewing in challenging times. In N. Watson, J. Scane & G. Bedard (Eds.), *For the love of learning: Background papers for the Royal Commission on Learning: Volume I*. Toronto: Royal Commission on Learning.

Philips, D. (Ed.). (1991). Equal education revisited. [Special Issue]. *Oxford Review of Education*, 17(2).

Schweitzer, T.T. (1995). *The state of education in Canada*. Montréal: Institute for Research on Public Policy.

Smith, J.A.C. (1980). The right to an appropriate education: A comparative study. *Ottawa Law Review*, 12, 367-391.

Smith, W.J (1993). Equality in Nova Scotia schools: More "fleeting privileges?" *CAPSLE Comments*, 3 (2), 1, 2-5.

Smith, W.J. (1994). *Equal educational opportunity for students with disabilities: Legislative action in Canada*. Montréal: McGill University, Office of Research on Educational Policy.

Smith, W.J. (1997). *School performance and change: Implications for education management development* (Paper prepared for the Canada-South Africa Education Management Program). Montréal: McGill University, Office of Research on Educational Policy.

Smith, W. J., Bordonaro, T., Sturge Sparkes, C. & Travers, L. (1996). *Schools speaking to stakeholders* (Project Report: 1995-96). Montréal: McGill University, Office of Research on Educational Policy.

Smith, W.J. & Foster, W.F. (1994a). Equal educational opportunity for students with disabilities in Canada: A platform of rights to build on. *Education and Law Journal*, 5 (2), 193-223.

Smith, W.J. & Foster, W.F. (1994b). Equal educational opportunity for students with disabilities in Canada: Beyond the school house door. *Education and Law Journal*, 5 (3), 305-334.

Smith, W.J. & Foster, W.F. (1996a). *Equal educational opportunity for students with disabilities in Canada: 1996 legislative update*. Montréal: McGill University, Office of Research on Educational Policy.

Smith, W.J. & Foster, W.F. (1996b). *Equal educational opportunity for students with disabilities: A source book for parents, advocates and professionals*. Montréal: McGill University, Office of Research on Educational Policy.

Smith, W.J. & Lusthaus, C. (1995). The nexus of equality and quality in education: A framework for debate. *Canadian Journal of Education*, 20 (3), 378-391.

Turnbull, H.R. III (1993). *Free appropriate public education: The law and children with disabilities* (4th ed.). Denver CO: Love Publishing.

Yell, M.L. & Shriner, J.G. (1996). Inclusive education: Legal and policy implications. *Preventing School Failure*, 40 (3), 101-108.

# MEETING SPECIAL EDUCATIONAL NEEDS WITHIN A LEGISLATIVE FRAMEWORK: THE SCOTTISH EXPERIENCE

**Dr George O. B. Thomson**
Institute for the Study of Education and Society, The University of Edinburgh, Scotland

## INTRODUCTION

This paper considers the impact of legislation to support provision for special educational needs within the context of Scotland – a distinctive region within the United Kingdom. It attempts this by drawing upon the research experience of the author and his colleagues. In the light of this experience a number of issues are discernible which generalise beyond the borders of Scotland. In particular, the issues of diversity of interpretation of, for example, statutory procedures, integrated versus segregated provision and criteria for identifying pupils with special needs, will be considered. The paper is structured in four parts. The first section provides a brief account of the Scottish educational system and its underpinning legislation. Attention is also drawn to the provision for special educational needs within the context of curricular reforms currently under way within Scotland. The situation with regard to provision for special educational needs is set in the context of two dominant philosophies. The second section reports selectively and briefly on research carried out by the author and his associates over the period 1986 to the present time on those aspects of the Scottish legislation as they affect pupils with special educational needs. The third section addresses two principal issues which the author perceives as arising: the problem of diversity between and within education authorities of policy formulation and implementation and the issue of inclusive education. The paper concludes with a presentation of a tentative model to be used by education authorities and related professional personnel in the process of identifying and resourcing children and young people with special educational needs. This model is derived from the author's current research, but not yet reported.

## THE SCOTTISH EDUCATION SYSTEM

In common with the rest of the United Kingdom, Scotland enjoys an educational system which provides for universal and compulsory education over the age range five to sixteen years. Within the Scottish system there are seven years of primary school education followed by four years of secondary schooling. Whilst the statutory school leaving age is sixteen plus, the reality is that increasing proportions of pupils remain at school for up to two further years – a phenomenon that in part reflects the problem of youth unemployment in recent years, but also reinforces a Scottish tradition of staying on to access the national examinations of the Scottish Examination Board (SEB) at 'Higher' Grade with a view to entering advanced, post-school education. Pupils at the Secondary 4 (S4) stage present for the SEB examinations at Standard Grade (Foundation, General or Credit) as well as for modular certificates awarded by the Scottish Vocational Educational Council (SCOTVEC). These latter awards are also available to pupils at S5 and S6 stages[1].

With a population of around five million and a school age population of just under one million, Scotland is divided administratively into 12 regions and island authorities.[2] 'Education' is one of a number of regionally based services whose funding is derived in part from regionally raised funds via the Council Tax and a share of the central government Exchequer grant which is allocated by formula through the Scottish Office. The Scottish Office Education Department (SOED) is responsible for the implementation of government policy in respect of education. The prime act which underpins education in Scotland is the Education (Scotland) Act 1980 as amended. In general terms, the similarities with the legislation covering other parts of the United Kingdom are greater than the differences, although with regard to provision for special educational needs the subtle differences are of greater significance, particularly in regard to parental wishes.

The Education (Scotland) Act, 1981 (the amending legislation to the prime Act) implemented certain proposals made by The Warnock Committee (DES, 1978) affecting pupils with special educational needs. The principal aims of this legislation were:

- to decategorize handicaps;
- to substitute the concept 'special educational needs' in place of the previous nine statutory categories of handicap;
- to ensure parental participation in all aspects of decision-making concerning their children's education;
- to stress the educational needs aspect;
- to introduce a formal document – the Record of Needs[3] – as the basis upon which a child's special educational needs would be identified, assessed and provided for, all in the context of parents' participation and agreement.

This Record (or 'Statement') of Special Educational Needs has the status of a legal document. It states the nature of a child's special educational needs after multi-disciplinary assessment; it outlines the measures proposed to meet these needs together with an indication of the school placement wherein the child should be educated; finally, and most importantly, it places on record the express wishes of the parent or guardian and, if the young person is over 14 years of age, then his or her views are similarly recorded. In some respects, this echoes aspects of the 'Individualized Education Plan' (IEP), familiar to those knowledgeable about the United States' legislation. Indeed the term 'IEP' has entered the currency of United Kingdom educational discourse, referring to any formalized statement of the educational program to be followed by pupils, especially those with learning disabilities, though not necessarily 'recorded' in terms of the legislation. Contentiously, there are parts of the Record of Needs which are exempt from parental appeal. Whilst parents can appeal against the placement recommendations contained in the document, they are denied any right of appeal against an education authority's failure to delivery or put into place the measures proposed in the Record to meet the child's needs. This continues to create tension between parents on the one hand and education authorities on the other. The effects of the legislation on provision for special educational needs have been evaluated by the writer and his

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1 For a detailed critique of the Scottish educational system see McPherson and Raab (1988).

2 As a result of local government reorganization in Scotland in April 1996, 29 all-purpose authorities took over from the earlier 12 regional and island authorities.

3 The term 'Statement of Needs' is used in the English legislation.

colleagues (Thomson, Riddell & Dyer, 1989; Thomson, Riddell & Dyer, 1990; and Riddell, Thomson & Dyer, 1992) to which we shall return later in this paper. Since 1987, a major reform of the curriculum has been under way. In that year, the SOED published its statement on the framework of the curriculum covering the age range 5-14 (SOED, 1987). The subsequent publication of specific curricular guidelines has continued to date with the whole initiative being referred to as the 5-14 Development Programme. A feature of each of the curricular guidelines has been the guaranteeing to all pupils of access to an appropriate curriculum. Each guideline document includes specific reference on how to deliver the curriculum to pupils with special educational needs. This educational development has been the subject of an independent evaluation by a research group co-ordinated by the Scottish Council for Research in Education (1994), a component study of which has focused on the needs of pupils at either end of the ability spectrum (Thomson, Ward & Stewart, 1995).

The writer argues that the so-called 'post-Warnock legislation' derives from at least two major philosophical or theoretical perspectives. At a general level, there is that perspective which indicates a major paradigmatic shift – from a deficit model of adjustment, towards a system model of change. In the former, special educational needs are seen to derive from a within-individual pathology; in the latter, special educational needs derive from the difficulties encountered by the individual in interacting with her or his environment and hence it is the system which is required to adapt and accommodate to the individual. For some time now, this view has been represented widely in the literature of contemporary educational psychology of which Apter (1982) and Campion (1985) would be illustrative examples.

At a more particular level, Kirp's (1982) comparative analysis of British, compared with United States, special education highlights a significant difference in the philosophical approaches to provision for special educational needs in both countries. Here, the distinctions between legislation for Scotland as compared with that for England and Wales are irrelevant. In Kirp's view, a range of policy options are available when an educational system seeks to provide for special educational needs. In the United States, 'legalisation' is the preferred option. In this, concepts such as civil and individual rights; due processes of law and so on dominate. These reflect, in Kirp's view, a cultural tradition of individualism by which the United States is stereotyped. In contrast, United Kingdom practice is dominated by what Kirp calls 'professionalization', wherein strategically placed or dominant professional groups control or act as 'gatekeepers' to procedures, processes, resources and so on. This analysis of practice was discernible in research conducted by the author and colleagues which examined the practice of recording pupils with special educational needs. It is to a review of that research that we now turn.

## PUPILS WITH RECORDED SPECIAL EDUCATIONAL NEEDS IN SCOTLAND

At the outset, it is important to stress an important distinction relevant to the data referred to in this paper. Whilst all children with Records of Needs, as determined by the relevant sections of the Scottish legislation, have special educational needs; not all pupils with such needs are necessarily recorded. This apparent anomaly reflects the widely held consensus view derived from the Warnock Committee that whilst as many as 20% of pupils may at some time experience temporary or but short-lived learning difficulties, only a very small proportion of such children will require to have their needs identified by a Record or Statement of Needs.

The author and his associates have reported elsewhere (see for example Thomson et al., 1989 and 1990) a major study of the impact of the Scottish legislation over a three year period. In this, quantitative and qualitative data were gathered in respect of a population of 2,861 children for whom Records of Needs had been opened in the three years 1986-1989. The analyses of the data indicated a statistically significant increase in the use of mainstream provision but this was discernible only in four of the twelve administrative regions and for pupils mainly with physical and/or sensory impairments. Analyses of policy documentation and interviews with key informants suggested considerable variability between authorities and a domination by educational psychologists in the decision-making process. Parents felt somewhat confused and marginalized by the procedures. Psychologists also identified as a major concern the role conflict situation in which they found themselves placed, by being at the same time both advocates for the child and officers of an education authority acting as gatekeepers or custodians to resources. Whilst the study was not set up specifically to examine trends in integration or inclusive education for pupils with special educational needs, it was apparent that practice in this regard was variable, reflecting at the time of the research, on the varying degrees to which authorities had addressed this as a policy issue. The qualitative data revealed that this differential pursuit of integrationist policies was dependent wholly upon such factors as availability of resources, the attitudes of parents and, crucially, the stance adopted by professional officers within the education service. This work represented a self-contained study in itself. As such, it complemented parallel work in England and Wales reported by Goacher, Evans, Welton & Wedell (1988). The question is raised, to what extent have the trends identified been continued to the present time?

In the light of continuing research on the transition to adulthood of pupils with special needs and current work on the criteria by which pupils may be identified as having special educational needs requiring a Record of Needs to be opened, the author has maintained a close scrutiny of the practice of recording as it has evolved in Scotland to the time of writing. In this context, and in the writer's opinion, two major issues or themes are apparent. It is to a consideration of these that we now turn.

## ISSUES ATTENDANT ON THE RECORDING OF PUPILS WITH SPECIAL EDUCATIONAL NEEDS

The practice of recording pupils with special educational needs continues to excite variable reactions, dependent on the perspectives of parents, education officers and educational psychologists. Increasingly, the first of these, the parents, see recording as a vehicle by which scarce and diminishing resources may be accessed and secured. Parents see recording as the *only* mechanism available to them in this 'battle for access to resources' and in this they have become better supported by advocacy groups and others in the pursuit of this end. This brings into sharp relief an inevitable conflict situation with education officers who, as representatives of the education authority, are crucial gatekeepers to resources. Education officers are faced with competing demands on budgets and find their task unenviable. Educational psychologists who, against their professional judgment, have become the group responsible for the administrative aspects of recording, see themselves placed in an unacceptable role conflict situation. They argue increasingly that their bureaucratic function in recording is professionally inappropriate and diverts attention away from crucial aspects of work in supporting children with special educational needs.

In the writer's view, this confused situation reflects a major issue which has become more salient as time goes by. Here, the problem is one of variability in policy formulation and implementation. Over the period of time in which the writer has been engaged in this area of enquiry, it has become increasingly evident that education authorities

have found the circulars attendant on the legislation to be inadequate and unhelpful. Education authorities have clamored for more specific guidelines on recording from central government. Individual authorities have attempted to formulate policies but more and more the evidence is that the variability of resources between and within authorities seems to preclude the articulation of nationally applicable criteria by which Records of Needs may be opened.

The SOED has issued a draft circular on assessment and recording services (SOED, 1994a) which, when finalized, will go some way to meeting the concerns expressed. In this, the SOED has complemented the work of the Department for Education (DFE) whose Code of Practice (DFE, 1994) on the identification and assessment of special educational needs has met with positive response. Arguably, however, a more relevant and apposite response to education authorities' call for clearer guidance has been the Scottish Inspectorate of Schools' report on effective provision for special educational needs (SOED, 1994b). The report updates and consolidates earlier SOED thinking on how the education system must vary, elaborate and adapt to ensure effective provision to meet the complex special educational needs found increasingly in mainstream schools as integrationist policies begin to take effect. This latter point, the increase in mainstream provision for pupils with educational needs, raises the second issue identified by the writer in his work in this field. Here, the issue is the apparent mismatch between the rhetoric and the reality of the inclusion of pupils with Records of Needs into the mainstream. Swann (1985 and 1988) and Thomson et al. (1990), reporting on data on 'statemented' and 'recorded' pupils in England and Scotland respectively, drew attention to the fact that the integration of children with special educational needs seemed to be restricted to those children of primary school age, and predominantly those with physical and/or sensory impairments. In a privately circulated paper to the SOED, Thomson (1992) re-analyzed his 1990 data together with statistics provided by the SOED (1992) to plot the likely proportions of recorded pupils being educated in mainstream schooling over the period 1986-1995. This is shown as Figure 1.

**Figure 1**

*Trends in Mainstream Recording 1986 - 1995*

Sources:Thomson et al. (1990); Thomson (1992) and SOED (1992)

The fitted regression line suggests that it will be the late 1990s before even 50% of all such children are integrated into mainstream settings. This conflicts with popular impressions and also, to some extent, with recent statements from the Minister for Education at The Scottish Office that "recorded children in mainstream provision ¼ ... now comprise just under one-half of all children with Records of Need(s)" (Douglas-Hamilton, 1993, p. 8).

The analyses cited immediately above embrace all children with special educational needs, since it is difficult to disentangle some of the data to identify particular disabilities. Nevertheless, the cautionary note is entered that integration might not be so widespread as is believed.

Whilst others might highlight different issues, to this writer these two are regarded as having prime salience. The latter point – that of integration versus segregation – highlights the 'resources driven' nature of decisions to record or not a child in the sense that the type of educational placement available for a given individual appears to dominate outcomes. In one sense, the issue of *where* a pupil with special educational needs is to be educated should be subordinate to the question *how* such a child and its teachers and parents should be supported. Thomson & Dyer (1988) have argued that the optimal educational placement of a pupil should take account of at least four variables, namely:

- the extent of the pupil's resource needs;
- the functional and adaptive characteristics of the pupil;
- the level of special educational services provided;
- the wishes of the parent.

The opportunity to refine this somewhat tentative thinking was created in the context of the author's ongoing research into the criteria by which children may be considered for recording. This we now consider in the final section of the paper.

## CRITERIA FOR OPENING RECORDS OF NEEDS

In the 12 years which have elapsed since recording pupils with special educational needs was first instituted, it has become clear that an increasing tension exists between the demands of the legislation; the legitimate aspirations of parents; the relative absence of universally applicable guidelines; and the initiatives of education authorities to develop policies on record keeping, review, regular monitoring of pupils and resource allocation. These latter initiatives are likely to lead to a situation whereby recording as such may well be seen to be irrelevant – a point to which we shall return.

In this context, the author has been engaged in a research exercise funded by SOED to develop criteria for opening Records of Needs. This work has been reported formally (Thomson, Stewart & Ward, 1995 and Thomson, Stewart & Ward, 1996). Certain aspects of this work are relevant to this present discussion. The research group at The University of Edinburgh has examined a sample of 767 Records opened in four separate months of the academic session 1993/1994. From these, a focused sample of 117 has been drawn and used by the researchers as case material to elicit from key respondents reasons driving the decision to open the relevant Records of Needs. In this way, current practice is one source of evidence; however, to determine criteria for opening a Record of Needs on this basis, is only one strategy. It is important that such criteria as may be derived reflect a logically consistent approach which is theoretically and empirically supported. It is possible to make a distinction between the *types* of educational support available to a school and the *levels* of educational needs of a given pupil. There is a widely held consensus view on these points, though terminology may differ from commentator to commentator. For example, Center (1987) proposed a model for delivering special education services embracing eight levels of service delivery. Mitchell & Ryba (1994), echoing this view, described a more parsimonious model for New Zealand. In Scotland, Cross, Abraham, Kirkaldy, Hill & Smith (1994) argue for an approach to recording special educational needs which takes account of dimensions of needs and provision. Documentation gathered from education authorities by the researchers in the course of their work, suggests that there exist broadly similar approaches to describing types of provision.

Using this as the basis of content analysis, the present research has arrived at the view that in considering any child's special educational needs, it is necessary to take account of six variables:

- the physical environment;
- the nature of the curriculum and how it is delivered;
- the level of pupil support needs;
- access to specialized resources;
- access to specialized support agents or agencies; and
- the mode of communication.

Further, it is possible to grade the level of need on each of these variables along a continuum. Drawing upon the research evidence, the author has formulated this as 4x6 matrix which is shown as Figure 3.

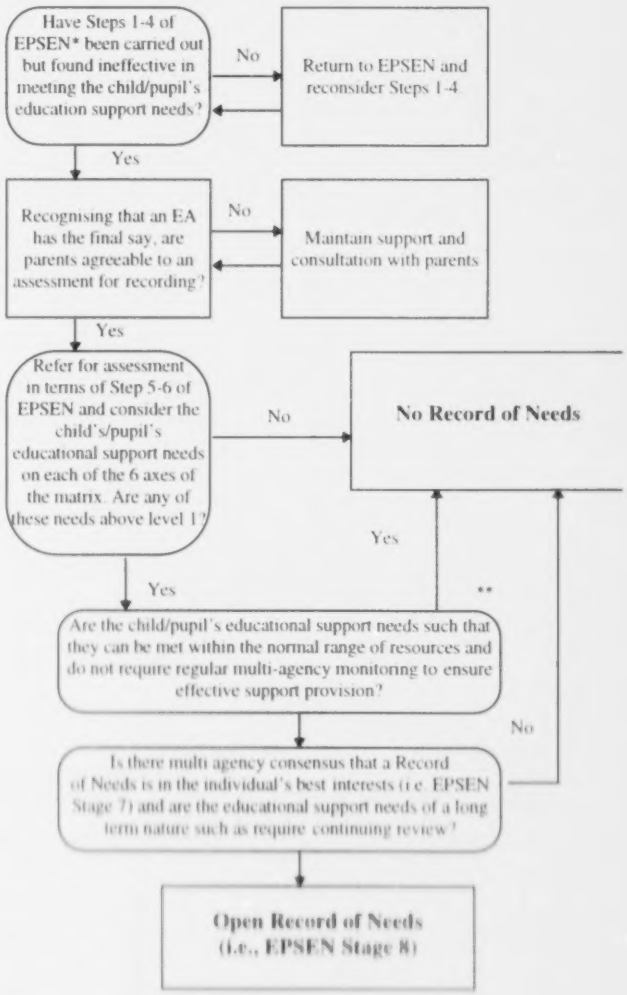
In this matrix, the cell descriptors provide an operational basis on which decisions may be taken regarding the support for a pupil with special educational needs. Figure 2 represents a tentative decision tree which might facilitate decision-making concerning the opening of a Record of Needs for any one child. It is to be stressed that development work on this approach is ongoing and may alter in the light of a feasibility study presently under way. A full report on this work is in preparation and awaits publication at a later date. It is offered at this time as a relevant illustration of how thinking and practice has developed on the issue of delivering services to pupils with special educational needs. The important point to stress is that this approach has been developed in an attempt to address a major source of conflict in supporting children with special educational needs.

On the one hand, there is the issue of the legitimate expectations of parents that education authorities will fulfil what they, the parents, perceive to be legally binding obligations to provide identified resources, both personal and material, in support of their children. On the other hand, there is the issue that fiscal constraints on education authorities result in resources becoming scarce with resultant conflict with parents on their allocation (a particular problem within the United Kingdom context). A consequent issue resulting from the above is that educational psychologists find themselves placed in inevitable conflict situations. This makes it difficult for them to ensure optimal delivery of services for children with special educational needs whilst at the same time operating with that sense of 'due diligence' necessary in the discharge of their duties as officers of an education authority. To this end, the study reported above was directed at developing a set of criteria by which education authorities might adopt a set of universal practices in the opening of Records of Needs. An important objective in this exercise is to reduce the degrees of variability of practice which exists between education authorities. A further aim is that of providing parents with a clear view of how an education authority sets about the task of identifying and resourcing the special educational needs of their children.

The approach described above has been developed in an attempt to resolve these problems. The model takes as axiomatic the view that *all* schools should be minimally resourced at Level A as described in the matrix (Figure 3). In essence, this presumes that schools are staffed and resourced at a level which enables a class teacher to cater for the educational needs of the pupils in her or his class without referral to external agencies. This is not to be interpreted as accepting of a minimalist position, but rather to recognize the practical realities of contemporary educational provision. The focus of the work referred to in this paper has been on the need to provide education authorities and parents alike with a clearly described set of criteria by which decisions may be arrived at in determining the opening of a Record of Needs. In this regard, the proposed model is aimed at providing education authorities with a set of criteria by which they are able to audit the support services available and to deploy them in a consistent manner. The matrix, together with the decision tree, is offered as a tool, the principal objective of which is to reduce the variability which exists between authorities' practices and which has been such a source of conflict. The extent to which this objective may be realized must await the outcome of the feasibility exercise referred to above.

**Figure 2**

*A Decision Tree*


Have Steps 1-4 of EPSEN* been carried out but found ineffective in meeting the child/pupil's education support needs?
No
Return to EPSEN and reconsider Steps 1-4
Yes
Recognising that an EA has the final say, are parents agreeable to an assessment for recording?
No
Maintain support and consultation with parents
Yes
Refer for assessment in terms of Step 5-6 of EPSEN and consider the child's/pupil's educational support needs on each of the 6 axes of the matrix. Are any of these needs above level 1?
No
No Record of Needs
Yes
Yes
**
Are the child/pupil's educational support needs such that they can be met within the normal range of resources and do not require regular multi-agency monitoring to ensure effective support provision?
No
Is there multi agency consensus that a Record of Needs is in the individual's best interests (i.e. EPSEN Stage 7) and are the educational support needs of a long term nature such as require continuing review?
Open Record of Needs (i.e., EPSEN Stage 8)

* EPSEN refers to SOED (1994b) document Effective Provision for Special Educational Needs.

** This step is intended to reinforce the good practice of continued audit as well as regular monitoring of any pupil with educational support needs.

**Figure 3**

*Proposed Level of Needs*

| *Needs relating to:* | **Level A Needs** | **Level B Needs** | **Level C Needs** | **Level D Needs** |
|---|---|---|---|---|
| **The physical environment** | The ordinary class/school environment is appropriate | Some special features are needed in the class/school accommodation. For example, access to a resource base may be required for the delivery of structured programs etc. for some of the time. Provision of ramps and other aids | A specialist facility may be required e.g. a resource base/unit within a mainstream school may be required for a substantial portion of the pupil's time in school. Major structural alterations required | A highly specialized environment e.g. a special unit/school is required for all the time the pupil is in school dealing with a combination of profound sensory loss, physical disability and/or disruptive behavior |
| **The curriculum and how it is delivered** | Ordinary curriculum with minor features of differentiation in relation to '5-14' guidelines such as: specific objectives for reading, listening, etc. Alternative methods of presentation within the group | Significant differentiation is needed in ONE or some areas of the '5-14' curriculum such as require structured and clearly targetted programs in learning and/or behavior which are subject to termly review | Very substantial and specialised differentiation is needed in a wide area of the '5-14' curriculum such as require weekly review and consultation with agent(s) external to the school on an individualized teaching plan | The curriculum which the child follows is radically different from that provided in the mainstream in that it requires daily review and consultation with agent(s) external to the school in order to establish the pre-requisites for learning e.g. cognitive, sensory development. |
| **The level of pupil support required** | Levels of pupil support/contact in individual/group settings which are normally available with short periods of up to 3 hours per week contact with classroom aide in small group of 4/5pupils | Direct individual support by Learning Support staff in small group of 4/5 pupils. Use of scribe/reader. Short-term behavior support to avoid causing stress to self/others | Enhanced level of individual pupil/aide contact required for some of the time e.g. primary care needs (soiling, catheterization etc.); behavior support | Pupil requires enhanced level of teacher and/or aide contact continuously. Extended primary care needs; continuous behavior support; longer term life plan of total care needs |
| **Access to specialised resources, facilities and technologies** | Ordinarily available resources, facilities and/or technology shared with groups of up to 4/5 pupils on a time-limited basis e.g. word processors/PCs | Ordinarily available resources, facilities and/or technology required by the pupil individually, on a time-limited basis e.g. word processors/PCs | Highly specialised resources, facilities or technology not normally available and deployed/designed for the pupil's specific use on a time-limited basis | Highly specialized resources, facilities or technology not normally available and deployed/designed for the pupil's specific use on a continuous basis |
| **Access to specialised support agent(s)** | Needs identified and monitored by class teacher and within-school support staff e.g. Learning Support in mainstream setting. Advice only from other external agent(s) e.g. RAPS, speech and language therapy, behavior support, sensory-impaired service etc. | Agreed and monitored support and advice with clear objectives delivered by teacher and support staff deployed to support/teach pupil. Examples of agent(s) involved: RAPS, speech and language therapy, occupational therapy, physiotherapy, sensory-impaired service, behavior support | Agreed, monitored and delivered support on a regular basis of up to 2 hours per week to small groups of 4/5 pupils by specialist agent(s). Agent(s) as in Level B | Agreed, monitored and delivered support on an intensive basis of up to 5 hours per week on an individualized basis in a specialized setting e.g. unit, base or special school by specialist agent(s). Agent(s) as in Level B |
| **Mode of communication** | Ordinary oral/aural and written applies with support from relevant aids | | Specialized methods are required by the pupil e.g. sign language/braille | |

## CONCLUSION

This paper has considered the extent to which support for children with special educational needs may be delivered within the prevailing legislative framework of the United Kingdom. It has not been the focus of this paper to discuss the need for curricular reform in schools - although some reference has been made to the Scottish initiatives in this respect by the '5-14 Development Program.' It remains an open question - certainly one frequently articulated by educational psychologists - whether or not recording or statementing procedures are the most relevant way of achieving this. We shall return to this point below. What we see here is that distinction between North American and United Kingdom approaches which Kirp (1982) so ably discussed. In the former, the cultural tradition is one of consideration of the individual, rather than the needs of the system as mediated by professionals, which is the latter experience. Legislation for human rights is translated through cultural variables and political economies. Thus, within the United Kingdom, we see a prevailing ethos of legislation being set in place but professionals (especially educational psychologists) become the principal mediators of policy at a local level. In Kirp's terms, professionalization becomes the policy option, rather than legalisation - the United States option - wherein the protection of individual rights is held to be paramount.

In conclusion, this paper has briefly outlined the legislative basis upon which pupils with special educational needs are identified and supported within the Scottish education system. It has set this within a general philosophical context. Issues which have emerged in the practice of recording such special educational needs have been identified as the diversity in policy formulation, meeting special needs in mainstream or segregated settings, and the criteria by which pupils are so identified and supported. Drawing upon the writer's current work, a tentative model was described in terms of how pupils' special educational needs may be considered against a set of six, empirically determined variables – this latter model is still under development and further reports on its application and efficacy are forthcoming.

The point was made above, concerning the possible irrelevance of statutory procedures in meeting a pupil's special educational needs as education authorities develop more systematic policies and procedures regarding review, monitoring, etc.. Current developments within Scottish education accentuate this in the mind of the writer. Let us consider two basic principles which emerge. On the one hand, the SOED Draft Circular (1994a.) stresses unequivocally:

> there should be no difference in approach to the provision of education across the continuum of special educational needs. The Record of Needs is not a document which should make a child out as different; nor should it be regarded as necessary to commit resources which would not otherwise be available (para 23, p. 6).

On the other hand, the basic assumption underpinning the 5-14 Development Program (SOED, 1993) is that all pupils have access to an appropriate curriculum. Given these two principles, there remains a degree of confusion as to what precise purpose the legislation covering recording special educational needs serves. When there is added to this the concern expressed by professionals at the volume of bureaucratic work involved, then the visceral question remains: What is a Record of Needs and its attendant procedures meant to achieve? If the answer is merely to provide parents with a legal basis against which they may appeal against an education authority when it 'fails to deliver the services', then one has to question the extent to which the accountability culture has taken us if the outcome is the abandonment of 'parents as partners' in favor of 'parents as adversaries.'

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## *REFERENCES*

Apter, S. (1982). *Troubled children: troubled systems*. London: Pergamon Press.

Campion, J. (1985). *The child in context*. London: Methuen.

Center, Y. (1987). Integration – historical perspectives. In J. Ward, S. Bochner, Y. Center, L. Outhred & M. Pieterse (1987). *Educating children with special needs in regular classrooms – an Australian perspective*. North Ryde: Macquarie University Press.

Cross, J., Abraham, C., Kirkaldy, B., Hill, S. & Smith, E. (1994). *The dimensions used in Records of Needs*. Final report to the Scottish Office Education Department. Mimeograph: University of Dundee.

Department for Education (1994). *Code of practice on the identification and assessment of special educational needs*. London: HMSO.

Department of Education and Science (1978). *Special educational needs* (The Warnock Report). London: HMSO.

Douglas-Hamilton, Lord James (1993). *Special educational needs*. Dundee: National Association for Special Needs.

Goacher, B., Evans, J., Welton, J., & Wedell, K. (1988). *Policy and provision for special educational needs: Implementing the 1981 Education Act*. London: Cassell.

Kirp, D. (1982). Professionalisation as policy choice. British special education in comparative perspective. *World Politics*, 34 (2), 134-174.

McPherson, A. and Raab, C. (1988). *Governing education. A sociology of policy since 1945*. Edinburgh: Edinburgh University Press.

Mitchell, D. & Ryba, K. (1994). *Students with education support needs*. Report to the New Zealand Ministry of Education. Hamilton: University of Waikato.

Riddell, S., Thomson, G.O.B., & Dyer, S. (1992). A key-informant approach to the study of local policy-making in the field of special educational needs. *European Journal of Special Needs Education*, 7 (1), 47-62.

Scottish Council for Research in Education (1994). *Implementing 5-14: a progress report* (Interchange 23). Edinburgh: HMSO.

Scottish Education Department (1987). *Curriculum and assessment in Scotland: A policy for the '90s*. Edinburgh: HMSO.

Scottish Office Education Department (1992). *Personal communication*.

Scottish Office Education Department (1993). *The structure and balance of the curriculum 5-14*. Edinburgh: HMSO.

Scottish Office Education Department (1994a). *Children and young persons with special educational needs. Assessment and recording services* (Draft Circular). Edinburgh: HMSO.

Scottish Office Education Department (1994b). *Effective provision for special educational needs*. Edinburgh: HMSO.

Swann, W. (1985). Is the integration of children with special educational needs happening? An analysis of recent statistics in special education. *Oxford Review of Education*, 11 (1), 3-18.

Swann, W. (1988). Trends in special school placement to 1986: measuring, assessing and explaining education. *Oxford Review of Education*, 14 (2), 139-161.

Thomson, G.O.B. & Dyer, S. (1988). *Recording special educational needs*. Interim Report 2. Mimeograph: The University of Edinburgh.

Thomson, G.O.B., Riddell, S. & Dyer, S. (1989). *Policy, professionals and parents*. Mimeograph: The University of Edinburgh.

Thomson, G.O.B., Riddell, S. & Dyer, S. (1990). The placement of pupils recorded as having special educational needs: an analysis of Scottish data. *Oxford Review of Education*, 16 (2), 159-177.

Thomson G.O.B. (1992). *A comparative study of special educational needs provision in mainstream and special schools in Scotland* (Submission to SOED). Mimeograph: The University of Edinburgh.

Thomson, G.O.B., Ward, K.M. & Stewart, M. (1995). *The 5-14 development program and least and most able pupils*. Mimeograph: The University of Edinburgh.

Thomson, G.O.B., Stewart, M. & Ward, K.M. (1995). *Criteria for opening Records of Needs: A report to the Scottish Office Education Department*. Mimeograph: The University of Edinburgh.

Thomson, G.O.B., Stewart, M & Ward, K.M. (1996). Criteria for opening Records of Needs. *Interchange No 40*. Edinburgh: The Scottish Office.

# LEGISLATION IN AUSTRALIAN SPECIAL EDUCATION INTENT AND EFFECT: THE IMPACT ON CHILD, FAMILY AND TEACHER

**Roy. I. Brown**
School of Special Education and Disability Studies, Flinders University of South Australia, Australia

## INTRODUCTION

This paper has particular reference to Australia. However, my involvement in Australian special education has been brief. This has both advantages and disadvantages. In both Australia and Canada I have had the fortune to advise State and Provincial Departments of Education on issues of inclusion, and have therefore had an opportunity to look at practical operations within particular legislation. I have also been able to observe on the one hand what I perceive to be intent on the part of legislators, bureaucrats, and teachers and, on the other hand, the various aims of parents, families and advocates. I have also been involved with people of different ages from early childhood to late adulthood in their quests for different types and levels of inclusion in mainstream society. My aim in this paper is to examine some of the policy statements in special education within Australia and set them within the context of developments in other countries, such as the U.S.A., England and Canada. Later in the paper it will be seen that these countries have influenced Australia's special education debate in different ways, depending partly on the allegiances of the individuals involved.

Although the paper particularly examines legislation, I have included some reference to educational research relating to children with disabilities, for it is important to recognize that much policy is based on social and political pressure which is at times unenlightened by scientific study. This seems to me to be an important issue for arguments associated with biases by the major protagonists hold what some regard as undue sway. For example, regular school leaders and principals have varied concerns about the inclusion of children with disability, including some who are decidedly against inclusion. Parents of disabled students often, but not always, demand access to regular schools for their children. In this confrontation a number of researchers, particularly from the U.S.A., who favor inclusion, have provided major arguments, though not always hard evidence for inclusion. The problem of evidence is gradually being rectified but the resulting collection of information has resulted in some recent division of opinion by educational researchers. On the one hand, some (e.g., Lipsky & Gartner, 1995) have provided considerable evidence from a wide range of studies on the value of inclusion - evidence that not only supports the perception that positive effects arise for children with disability, but argues for positive effects on the other, non-disabled, children. Along with this is the suggestion that such measures can be cost effective (National Center for Education Restructuring 1994/95). But such arguments are disputed by others (e.g., Hartman, 1994) who have suggested that particular children, for example those with learning disabilities, benefit from special and separate education, at least for part of the time. Mather & Roberts (1995) and others such as Kauffman (1995), for example, suggest that a total inclusionary policy will be too biasing and that flexibility and diversity will be required in different types of schools for children with disabilities. In this context, our understanding of variability amongst children with disabilities is important. The above is particularly relevant to Australian policy makers and is underscored by the evidence against segregation, which is probably a more important dynamic in influencing society's behavior to inclusive education than any scientific data supporting inclusion (see Ysseldyke, 1987; Porter & Richler, 1991).

Much of the research on inclusion work is North American, and rightly it is heard in the Australian scene. It tends to be quoted selectively depending on the values held by the Australian protagonists of one side or another. It is therefore at the level of values that we need to examine our educational philosophy, hopefully with some weighting for research reliability and validity - factors that often cannot weigh heavily at the policy level because of the confused presentation of material.

Also entering the Australian discussion are the reports and studies from the United Kingdom. Indeed, special educational reports (such as the Warnock report) and, perhaps to a lesser degree, the work of Tomlinson (1982) and Barton (see, for example, Barton, Ballard & Fulcher, 1991) on the sociology of special education have had direct impact in sensitizing the interested community who need to re-examine the role of special education. Yet I shall argue that even this has not enabled Australia specifically, or indeed the countries of document origin, to set policy within a larger educational context. Barnes (1991), for example, sees people with disabilities being actively discriminated against, both consciously and unconsciously, by a State which historically has not developed adequate sensitivity to disabilities. But how could it? This is a developmental process which now demands that we look to the wider society as well as educational research to resolve the issues facing education in general and children with disabilities in particular. The framework for such research may be seen in the development of such research-practice models in the fields of quality of life and well-being (Felce & Perry, 1997). Yet much of this work involves adults with disabilities.

Inclusion in this context is seen as a social phenomenon involving issues of quality of life. It requires adoption and action by parents, not just within a school domain, but in terms of parental behavior and the behavior of social groups which surround the child. Brown & Timmons (1994) and Timmons & Brown (1997) have demonstrated that many families do not practise inclusive models within their own family group or within their neighborhood. It is inappropriate, and probably ineffective, to see education simply as the sole environment for inclusion. From this perspective, it is positive that legislative practice is seen in the context of an adumbrating Discrimination Act. But, in itself, this is insufficient if the application of that Act only considers the educational place or educational benefit of inclusive education for a specific child. The examination must go further and consider the broader implications of inclusive practices.

This suggests that procedures within the home and the availability of impartial advice to develop co-ordinated and practical packages of inclusion will be required. In turn, this necessitates the development of both transdisciplinary and multidisciplinary processes and skills to assist in the child's development, with the parents being seen as equal partners. However, this still leaves unaddressed the issues surrounding societal values which implicate the family (Mitchell & Winslade, 1997) and are critical to comprehensive inclusion. Once again, policy needs to be redefined and to lead to new practices, which themselves can only occur if

efforts are made to change community values.

It may well be asked why quality of life issues have not been raised as effectively in the context of children with disabilities as they have with adults who have disabilities. Brown (1996) has argued that children, and children with disabilities in particular, have little power base in society. While adult disability groups are gaining international and national recognition, and therefore are increasingly permitted to have a say at various policy and legislative levels, children with disabilities are represented in their absence. They may be advocated for by parents, professional advocates and some professionals. But this is a role-substitute for personal involvement. The reasons for this are both historically and psychologically obvious, but we have not yet brought about appropriate substitutes for personal representation. Studies in the quality of life area suggest that much more notice should be taken of the observations and statements of children with disabilities. This clearly should also be an area for research. Carefully constructed research programs on advanced models of education for children with special needs should be set up in such countries as Australia to explore the impact of different models. This aspect of the inclusion debate cannot and should not be left to other countries, because the argument for and against inclusion are set within the social web of particular societies.

## LEGISLATION

In Australia it is apparent that legislation regarding special education, whether inclusive or not, must be seen within a mosaic of Federal and State Acts. However, the matter is further complicated by the all-encompassing effects of Federal legislation on State enactments, and also by the breadth and interlocking nature of legislation within a State. All of these processes have implications for special education. In South Australia, for example, other legislation, apart from the Education Act, impinges on special education. This legislation includes The Disability Services Act, The Equal Opportunities Act, and The Occupational Health, Safety and Welfare Act. Here, as in other States, it is the interacting mosaic of legislation which forms the foundation for action and requires interpretation once confrontation occurs. In addition, several States, just as in South Australia, refer to and make use of what is known as the Social Justice strategy.

However, it is probably the Social Justice and Discrimination legislation, and the local Boards of the latter which set much of the tone for change. The Human Rights and Discrimination tribunals are seen as not only the potential advocates for families in relation to inclusion, but as power breakers and brokers of issues in contention. They are therefore major determiners of change through both required action and, at times, compensation to parties appearing before them. For example, in New South Wales a landmark decision by such a Board influenced patterns for inclusion beyond the State boundaries. Indeed, it is of interest that the judiciary has recently set aside the compensation dollars which such Boards have imposed in a wide range of recent cases relating to various issues of discrimination. What effect this will have on the eventual power of such Boards is important, but this action alone underscores the importance of such Boards in hearing and adjudicating inclusion cases.

It can be argued that although an Education Act may set the tone for the development of education, much of the power to invest in change relates to the Australian Disability Discrimination Act (1992). Even so, much of this legislation has not yet been put into effect and it appears that the Australian Disability Discrimination Act differs from counterpart legislation in the United States or Canada. In Australia, unlike the United States and Canada, there was no equivalent inclusive consultation with the disability community about its development and subsequent enactment. As a result, few people seem to be aware of the Act or its implications for education and other areas of activity (Tucker, 1994). This difference is probably a critical one because consultation relates to perceptions of choice and empowerment, and is therefore relevant to the degree of confrontation which is likely to take place between different parties. As knowledge of the Act increases, there is likely to be greater use of it in terms of challenges to education which involves aspects of exclusion.

Education Acts often deal little with special education or disabilities (e.g., the Education Act of South Australia, 1972 refers to compulsory education and the direction of children with disabilities to particular schools). However, in some States (e.g., New South Wales), principals have the right to exclude children from a school for reason of disability.

The provision of services to children with disabilities was particularly patchy across all of Australia until the 1970s, but in 1972 the Federal Government injected considerable sums of money into this process. This included funds for the training of special educators and for research in special education. In the 1980s, State education authorities undertook extensive reviews of special education policies (deLemos, 1994). Today, a substantial number of children with disabilities attend regular classes but the deLemos data indicate that only in South Australia do many more than 50 percent of children with disabilities attend regular classes while around 50 percent of children with disabilities attend regular classes in Queensland, Victoria and Western Australia. Special schools play a major role in most States and, at the time of the report, accounted for nearly half the disability placements in Victoria. Yet these and much allied data should be employed with caution as perceptions of who is disabled and at what level, along with what is practised as inclusion, can differ from State to State. This is also true between, for example, the Provinces of Canada and occurs even within Provinces. The recognition and identification of learning disability or behavioral disturbance are not accepted universals. This challenging problem is illustrated in part by Offord (1986) and Offord et al. (1987) from Canada, who showed that behavioral and emotional disturbances are recognized and diagnosed differently by different persons, and may often depend on the environment in which the behavior is shown. I am not suggesting that standard definitions are required, but as we move to more practical applications it will be essential to know the types and levels of disabilities being described and the situations in which behaviors are encountered.

## POLICY STATEMENTS, POSITION PAPERS AND GUIDELINES: THE ROLE OF INTERPRETIVE DOCUMENTS

Despite the relevance and critical importance of legislation at State and Commonwealth (Federal) levels, and notwithstanding the critical role of human rights legislation, the position taken by governments and the bureaucracy is, within the broad framework of legislation, determined by position papers and guidelines set by departments. These, as indicated, must take into account the Federal legislation noted earlier; thus integration of students with disabilities into regular schools, involvement of parents, and development of appropriate curricular are spelled out.

But such documents often provide for bipartisan interpretation. On the one hand, they may be viewed as progressive because they highlight change of direction and flexibility. They see children who are disabled being educated as close as possible to their own homes, responsive curricula being provided and students having their individual needs met. They may argue for the development of sound philosophy, and often note the need for consultation with parents. On

the other hand, this very flexibility may be seen by consumers (particularly parents) as a means of not implementing all the necessary strategies required for inclusive education. At worst, parents may see such guidelines as statements which enable governments not to undertake particular changes, either because of lack of funds or the paucity of other resources. For example, guidelines include at times such statements as 'to the extent resources are available', and 'where possible.' The notion of consultation with parents may, on analysis of later statements, seem to imply informing parents of decisions. These statements may indicate methods of appeal, but are seen by some parents as blocks to inclusion.

## ISSUES OF IMPLEMENTATION

Despite guidelines, many children are not included. As deLemos (1994) has noted, even in 1992 the State of Victoria, where there is a principle of each child having a right to education in a regular school setting, about 40 percent of children with disabilities were in a special class (the minority) or special school (the majority). In today's climate, Australia's lack of financial resources and the need for time to prepare personnel for inclusion of children with disabilities are seen as necessary reasons for delaying aspects of the inclusion process. The effects are seen particularly in the lack of inclusion for children who are severely or profoundly disabled. Yet the concern of policy makers and professionals in education may be benign in these respects. They may genuinely support inclusion but be unsure of the degree and speed of inclusion in relation to specific disabilities, and the professional knowledge and financial resources required. Indeed, similar concerns arise in other countries, but experience in Australia suggests that there is a positive atmosphere for discussion and implementation, despite the fact that many participants are unconvinced about inclusion or are anxious about its practical implications. On the other hand, none seem to have interpreted legislation to mean full inclusion at the start of a student's education regardless of the degree of disability (cf., New Brunswick, Canada).

Educators at senior frontline levels may also be frustrated by the range of requests that are emanating from parents. These range from parents who demand the availability of special education facilities, even segregated ones, to those who insist on full inclusion of a child regardless of level of disability, or the dangers of mere exposure. Such parents may be supported by advocates who are vociferous and highly familiar with developments in other countries. Australian advocates seem well aware of the advances made in Canada and are familiar, for example, with published articles through the Canadian Community Living Association and allied documents (Gloeckler, 1994; Soyster, 1995). They are conversant with the works of Porter & Richler (1991) and newer publications such as Andrews & Lupart (1994). More importantly, they have read individual accounts of success portrayed in such journals as *Entourage*. Such information bolsters the views of those challenging the system and the impact to me seems profound. It is a case of lifting one's inclusive processes by other people's educational bootstraps. On the other hand, the legislators and designers of regulations seem to lean more on English (see, for example, The Warnock Report, see DES, 1978) or United States models (deLemos, 1994).

Yet for many professionals the case for inclusion has not clearly been demonstrated. The literature is sparse on effects, except at individual and clinical levels. The evidence for inclusion, particularly for intellectually disabled children, seems to lie in arguments for an inclusive society at the social level, and their social construct of disability which has been argued by Barton, Ballard & Fulcher (1991) and others. This is critically important, for although many of us would support to a major degree such arguments and the importance of their implications for minimizing segregation and discrimination (Barnes, 1991), they do not deal with some of the very practical issues of disability and how, practically, teachers can be helped to function effectively in an inclusive environment.

## INTERNATIONAL AND LOCAL FACTORS

For the most part, the position and policy papers appear to make a compromise between, on the one hand, the need to recognize the developments in the western world for the practice of social justice, the removal of discrimination and the development of an inclusive society and, on the other hand, an acknowledged need to give credence to issues relating to the development of a system of education which recognises the perceived performance difficulties shown by children with disabilities, the knowledge base and fears of teachers and principals who may never have knowingly worked with children who have disabilities, and the need to develop what they see as necessary curricular content along with the means of implementing this. All of the above may be genuinely held views and all may be correct to some degree. However, I would like to suggest that many position papers themselves are less than specific and limit the diversity of viewpoint, perhaps bearing in mind the fears of the authors who may not have recently worked at the frontline level with people with disabilities. Many, too, do not always recognise that society, largely in the form of increasingly knowledgeable parents who have children with disabilities, are challenging, but for the most part, positive forces to be reckoned with.

There would seem to me to be some under- and over-statement in these views, not just in Australia but also in other societies. Indeed, the degree to which Australian and State legislators give credence to and quote from international decisions by world bodies such as the United Nations and the World Health Organization underline the points relating to justice for all, universal education and choices. Yet legislation and principles do not yet reflect the strong call for inclusive education detailed in the Salamanca Statement and Framework for Action on special needs education (World Conference on Special Needs Education, 1994). But we have a discrepancy. It is one thing to acknowledge the need for change, and the importance of equality and non-discriminatory practices. It is quite another to have the expertise to put such views into effect with some likely degree of success. It is at the latter level that we have difficulties in countries like Australia. It is recognised that inclusion is on the agenda. State governments have changed their position on individual cases, particularly when legal action is proposed. Many of the solutions come at the eleventh hour - partly because education departments want to buy time, but also because they recognise and indeed are part of the current *zeitgeist* which is one of radical change towards a varied and variable mainstream society.

## PRACTICAL ISSUES

But again I wish to return to the practicalities. Although most, if not all, States in Australia recognise the move to inclusive education, there is also the view that special and exclusive education will still be required. The concept of total inclusivity is not readily accepted. For example, although most States make an attempt to recognise partnership with parents, when it comes to practicalities this may appear to refer to communication and information rather than a partnership between equals with different knowledge and skills. Some States, like New South Wales, specify the inclusion of parents in decision making. Yet what this means for different parents could be highly variable. Of course, one cannot specify detail within policy documents, but a broader consultative process is likely to make this unnecessary. Indeed, the question which lies behind such analysis is whether we are talking simply about the education of children or

acknowledging that we require an education process for teachers and allied personnel and also for families. But this is part of a larger agenda which relates to the purpose of education at the end of the twentieth century.

Again, the content of education may not be clear, except as a curriculum package governed by some form of individual program for the needy child. Indeed, there is a dilemma because many rules which have often been seen as necessary for such programming are developed without first examining, or rather re-examining, the purpose of schools. Frequently, but not always, school jurisdictions are seen as the pathways to tertiary education or employment. But special education has grown from an institutional and segregated model which existed, both explicitly and implicitly, within a context that assumed, at best, a short life span for the individuals concerned and, at worst, that the individuals would be in permanent need of special education. But, especially since the Second World War, a social revolution has taken place and children with disabilities frequently approach a life span commensurate with the general population. Thus, education systems now need to recognise not only position papers and strategies for transition to adult life, but their need to come to grips with the fact that most people with disabilities will outlive their parents. If this is not taken into account, we will inevitably return to an institutional model for older persons, as is beginning in the United States but has also been foreshadowed in Australia.

Position papers, then, may be in danger of ignoring what education could imply for people with disabilities. The situation is one of progress, but to some degree amounts in practice to tentative exploration. Frequently, the pleas of parents are seen as unreasonable demands because frontline education cannot see the purpose of the inclusion, but also predicates their arguments on a gloomy outlook for the included child. But prediction has not been a strong suit for professionals, who seem to under-estimate progress or assume that assessment will provide some predictive measures. For at least 25 years we have known that such views are incorrect. We cannot predict on the basis of assessment or individual teacher appraisal (see Cobb, 1972).

## LANGUAGE AND NOMENCLATURE

I believe the current situation argues for a total re-examination of the policy of regular schooling in general and the aims of special education in particular. It may well be that the outcome to this conflict results in a re-appraisal which affects all children. If this occurs, it must inevitably be linked to the labelling systems which are employed. Most States refer in their documents to specific disabilities by name. They also refer to allied services such as therapy. Such language, at least superficially, not only indicates how we are linked in our development to historical processes, but also shows how thinking is still within a medical or health model. If the aim is inclusive education with a recognition of a general population's variability, then the questions involve how we match educational intervention to need. It is this model which has to be pursued, rather than a cluster model based on the diagnostic label of disability.

There are other issues in the position papers which need clarification. Most States recognise explicitly life-long learning, but how this might be achieved amongst those with disabilities is not clearly defined, although there is encouragement to complete school education to age 18, and projects for people with disabilities have developed through Technical and Further Education (TAFE). However, the role of people with disabilities at the tertiary level is not fully discussed. The need is recognised as a result of anti-discrimination legislation and is seen as a major challenge. As a result, funds have been directed towards transition programs. But this is not seen as the context of longitudinal learning. Although there is explicit mention of early intervention and increasing inclusion at early educational grades for the persons with disability, the lifelong process of integrated development within a composite lifestyle seems missing at several levels. In other words, the system is antagonistically polymorphic. It believes in a broad-ranging education system, but in practice excludes children with certain profiles. It may do this more at one level rather than another. For example, in practice, inclusion is seen to function more at primary than secondary levels of education.

The State documents are language appropriate - they recognise explicitly the non-discriminatory language of our times. Thus, issues of gender, aboriginal peoples and disability are noted. Many documents speak of quality. At least one State explicitly notes the importance of self esteem and social skills. Others speak of quality and public accountability. Yet the concept of quality of life has not clearly entered into the dialogue. Policy and philosophical position papers need careful development in these areas and must occur at school level. It is of interest that Timmons (1993) reports that of over 2000 studies in quality of life only a handful relate to children. The subject matter of quality of life adumbrates not only issues of choice and empowerment, but the nuances of change required to bring about this quality (Brown & Timmons, 1994). It is commitment to this detail at family, community and school levels which is now lacking.

This needs to be developed in tandem with evaluation - the evaluation of programs, practices and policy. The question is whether the current documentation has sufficiently set the scene for such development, for the purpose of special education cannot be seen just in the context of social policy or inclusive society; it must also provide the practical application to make this a worthwhile reality for the children and families involved, and must lead to integrated programs across the lifespan. The passing of Federal legislation in paramount areas is critical, but greater specificity and demonstration are required to deal with the practical issues that arise.

## CONCLUSION

1. Omnibus anti-discrimination legislation is critical. It must be interpreted in user friendly language and should involve direct representation from the potential consumers.
2. The wishes and concerns of children with disabilities are frequently not considered. The means of taking account of their concerns is critical when it comes to designing effective policies regarding inclusion and exclusion.
3. The evidence on inclusion is, to some major degree, wanting - but strong arguments for inclusion have been produced with some supporting data. There is also some evidence that specific groups of children may benefit from partial withdrawal from regular education.
4. Despite the comments under 3, children need to be viewed individually and no rigid regulations will effectively make allowance for a child's specific needs.
5. Inclusion must be re-thought within the broad parameter of each child's environment. Inclusion in school, where it occurs, is insufficient. Specifically-designed education and societal and family practices are precursors and co-regulators of development and should influence the development of effective policy and practice. This needs to be recognised in legislation and in practice.
6. If such development is to take place effectively in Australia, it should be set up within various demonstration models which are carefully monitored and adapted as progress occurs.
7. Education for children who are disabled should recognise the

process as being life-long. The concept of transition to adult life is limited since educational and allied social issues will arise for such children across the lifespan.

8. It is essential that such practical exploration and demonstration of inclusive models be set up within each Australian State. The social matrix of Australia and the complexity of the education issues argue for local examination of their uses.
9. Policies and regulations do not of themselves determine the best outcome. They surely set the scene. Educational knowledge, practice and experience are critical and these must be engendered amongst teachers in Australia within a supportive educational and social climate.

## *BIBLIOGRAPHY*

### *Acts*

State Education Acts.
The Australian Disability Discrimination Act (1992)
The Australian Disability Services Act
The Equal Opportunities Act
The Occupational Health, Safety and Welfare Act

### *Guides*

*Ascertainment guidelines for students with disabilities and learning difficulties*. Department of Education, Queensland, (1993).

*Bulletin* (Issues for 1994 and 1995). National Center on Educational Restructuring and Inclusion.

*Educational provision for students with disabilities. Policy statement and management plan.* Department of Education, Queensland, (1993).

Policy for Services to Students with Special Needs (1992), in *Schools Bulletin* No. 504 , A.C.T. Department of Education & Training, A.C.T.

*Social justice in education. Policy and guidelines for the education of students with disabilities*. Ministry of Education, Western Australia, (1993).

*Special education policy*. New South Wales Department of School Education, 1991.

*Students with disabilities. The framework for post-compulsory schooling*. Education Department of South Australia, (1993).

*Who's going to teach my child?* NSW Department of School Education, 1991.

## *REFERENCES*

Andrews, J. & Lupart, J. (1994). *The inclusive classroom*. Toronto: Nelson.

Barnes, C. (1991). *Disabled people in Britain and discrimination*. London: Hurst and Co., Canada: University of Calgary Press.

Barton, L., Ballard, K. & Fulcher, G. (1991). *Disability and the necessity for a socio-political perspective*. Monograph 51. University of New Hampshire.

Brown, R.I. (1996). *Quality of life - the relevance for children with intellectual disabilities*. International Association for the Scientific Study of Intellectual Disability Conference, Helsinki, Finland, July.

Brown, R.I. & Timmons, V. (1994). Quality of life - adults and adolescents with disabilities. *Exceptionality Education Canada*, 4, 1-11.

Cobb, H.V. (1972). *The forecast of fulfilment*. New York: Teachers College Press.

deLemos, M.M. (1994). *Schooling for students with disabilities*. Hawthorne, Victoria: Australian Council for Educational Research.

DES (Department of Education and Science) (1978). *Special education needs* (The Warnock Report). London: HMSO

Felce, D. & Perry, J. (1997). Quality of life. the scope of the term and its breadth of measurement. In R.I. Brown (Ed.), *Quality of life for people with disabilities: Models, research and practice*. London: Stanley Thornes (in press).

Gloeckler, L. (1994). Linda's story. Around Edmonton. *Alberta Association for Community Living*, 1-3.

Hartman, W.T. (1994). Funding for a unified educational system. *The Special Education Leadership Review*, 33-39.

Kauffman, J. (1995). Why we must celebrate diversity of restrictive environments. *Learning Disabilities Research and Practices*, 10 (4), 225-232.

Lipsky, D.K. & Gartner, A. (1995). The evaluation of inclusive education programs. *Bulletin National Center on Educational Restructuring and Inclusion*, 2 (2), 1-7.

Mather, N. & Roberts, R. (1995). Sold out?: A response to McLeskey and Pugach. *Learning Disabilities Research and Practice*, 10 (4), 239-249.

Mitchell, D. & Winslade, J. (1997). Developmental systems and narrative approaches to working with families of persons with disabilities. In R.I. Brown (Ed.), *Quality of life for people with disabilities: Models, research and practice*. London: Stanley Thornes (in press).

Offord, D. (1986). *Ontario child health study: Summary of initial findings*. Hamilton, Ontario: Ontario Ministry of Community and Social Services.

Offord, D., Boyle, M.H., Szatmari, P., Rae-Grant, N.I., Links, P.S., Cadman, D.T., Byles, J.A., Crawford, J.W., Munroe Blum, A., Byrne, C., Thomas, H., and Woodward, C.A. (1987). Ontario child health study: II. six months prevalence of disorder and rates of service integration. *Archives of General Psychiatry*, 44, 832-836.

Porter, G. & Richler, D. (1991). *Changing Canadian schools Perspectives on disability and inclusion*. Toronto: The Roeher Institute.

Soyster, L. (1995). In the picture now. *Inclusion News*. 1994-5, Toronto, p.12.

Timmons, V. (1993). Quality of life of teenagers with special needs. Unpublished Ph.D. Thesis. University of Calgary.

Timmons, V. & Brown, R.I. (1997). Quality of life - issues for children with handicaps. In R. I. Brown (Ed.), *Quality of life for people with disabilities: Models, research and practice*. London: Stanley Thornes (in press).

Tomlinson, S.A. (1982). *A sociology of special education*. London: Routledge and Kegan Paul.

Tucker, B.P. (1994). Rights of hearing impaired persons under the Americans with Disabilities Act and The Australian Disability Discrimination Act.

World Conference on Special Needs Education : Access and Quality (1994). The *Salamanca Statement and Framework for Action*. United Nations: Educational, Scientific and Cultural Organisation & Ministry of Education and Science, Spain.

Ysseldyke, J.E. (1987). Classification of handicapped students. In M.C. Wong, M. Reynolds & H. Walberg (Eds.), *Handbook of special education in research and practice. 1. Learner characteristics and adaptive education*. New York: Pergamon.

# BRAZILIAN SPECIAL NEEDS EDUCATION: CONCEPTUAL FRAMEWORK AND POLICY FOR THE 1990s

**Georgia M. Kerns & F. S. Cavalcante Junior**
Department of Education, University of New Hampshire, USA

## INTRODUCTION

This paper presents the Brazilian conceptual framework and policy for special education based on the Politica Nacional de Educação Especial (Brasil MEC, 1994). It is beyond the scope of this work to present a historical review of special education in Brazil. Such information is already available in English (Lin, 1987) and several comprehensive historical reviews on the development of special education in Brazil have been published in Portuguese (Januzzi, 1985; Bueno, 1993).

Although Brazil is the second largest nation in the Western hemisphere and the largest country in South-America, very little is known beyond its borders about the efforts of Brazilian families and professionals regarding the integration of persons with disabilities. In a recent publication describing international perspectives on families' experiences with disabilities, Mittler (1995) writes, "The eighty stories we collected are not fully representative. There is perhaps a preponderance of stories from families in Asia and the Middle East. Australia, North America and Europe are adequately represented. There are fewer stories from Africa and *fewest of all from South America*" (p.2, emphasis added). Of the families represented, none were Brazilian. In 1994, the United Nations Educational, Scientific and Cultural Organization (UNESCO) sponsored 'The Salamanca World Conference on Special Needs Education.' There were no participants from Brazil listed in this conference's Final Report (1994).

As with other countries in the world, Brazil's educators and policy makers have given much attention to special education. In synergy with other nations during this last decade before the turn of the century, Brazilians have written their country's special needs education policies. Starting in the early 1980s, persons with disabilities became the theme of major United Nations initiatives, including the International Year of Disabled Persons (1981), the subsequent Decade of Disabled Persons (1983-1992), the World Program of Action in Favor of Disabled Persons (1983), the Convention on the Rights of the Child (1989), the Asian-Pacific Decade of the Disabled Persons (1993-2002), the United Nations General Assembly's Standard Rules on the Equalization of Opportunities for Disabled Persons (1993), and the United Nations World Conference on Special Needs Education in Salamanca, Spain (1994). All these initiatives have encouraged Brazil and other countries to create a conceptual framework for special needs education. It is our goal through this paper to begin crossing international and cultural borders to open space for Brazilian voices to be integrated in the mainstream dialogue about disabilities.

## CULTURAL CONTEXT

The largest country in South America, Brazil represents one of the world's largest economies and territories, as well as having the second largest population in the Western hemisphere. Due to its size, regional contrasts, and demographic diversity, Brazil qualifies for comparisons with other large Western countries such as the United States of America and Canada.

With a democratic constitution and a capitalist economy, Brazil is a Portuguese speaking country formed by a mixture of cultures. Described by Hess and DaMatta (1995), Brazil is a country where Catholics also believe in or practice African religions; the political and economic institutions operate through personal relationships as much as general rules; and the music, food, social relations, and - in general - tastes are as deeply shaped by Africa and Native America as by Europe. ... Brazil is a nation of the mixing of races (miscegenation), religions (syncretism), and cultures (diasporas, borderlands) (p.2).

In Brazil, a country of 155 million people, 40% of the population lives on one minimum wage per month (equal to US$100 for a 40 hour work week). Public school teachers (and the majority of private school teachers as well) in Brazil belong to the lower socioeconomic group. A teacher's salary averages US$79 per month for 20 hours of work per week. Not only are teachers poorly paid, but in many public schools, the only resources available for teaching are the teachers' voices and classrooms' blackboards.

There are about 19 million illiterate people in Brazil. For students who begin first grade, only 50% reach ninth grade. The rate of school retention in Brazil is 33% between grades 1-8 and 32% for high school. Within this reality, more than 8 out of each 100 Brazilian teachers have not finished middle school.

Access to universities is still a privilege for few students. The majority of students who succeed in passing the Vestibular (the university entrance exam which is different for each university in the country) come from private schools. These students prefer the public universities which are free and of higher quality. At the Universidade de São Paulo (USP), the most prestigious Brazilian university, 70% of the students come from private schools. The chance of smoothly navigating from first grade to higher education for a student from the public schools in Brazil is very limited.

## SPECIAL EDUCATION IN BRAZIL

As with P.L.101-476 (IDEA) in the United States, the right to a public education is guaranteed in Brazil's Constitution as promulgated in 1988, under article 208, item III, which guarantees "specialized educational services for people who have disabilities, preferably in the regular school system" (Brazil, 1988, p.138). However, according to Teresa Costa d'Amaral, former director of the President's Coordinating Council for the Integration of People with Disabilities (CORDE), only 3% of the estimated 13 million Brazilians with disabilities currently receive any kind of services (Novy, Pan, & Arns, 1992). The government has taken very little responsibility for the provision of services for people with disabilities. As pointed by Novy, Pan & Arns (1992): "... a Brazilian child with a disability receives few, if any, special education opportunities. Where available, services are usually delivered through state-supported programs administered by private, philanthropically-based, organizations" (p.42).

Only the 'visible' disabilities have been categorized in Brazil. They are divided into mental retardation, physical disability, hearing impairment, visual impairment, and multiple disabilities, as well as atypical conduct [behavioral or conduct difficulties] and high abilities [giftedness]. The two largest categories of special education in the United States are not formally defined in Brazil: learning disabilities

and speech/language handicaps (MEC, 1990 in Novy, Pan, & Arns, 1992).

Students with learning and speech problems are not excluded from Brazilian regular schools. It is simply that these students are not labeled and differentiated from the others. They may represent a challenge for their teachers and school professionals, but they belong there and classroom solutions are constantly sought.

## POPULATION WITH DISABILITIES IN BRAZIL

There are no official data that show the actual number of people with disabilities in Brazil or the types of services provided. The United Nations has estimated that at least 10% of the population of a country has disabilities. Based on this figure, Melo (1986, p. 8) calculated that in Brazil:

- 6.5 million people have mental disabilities (5%)
- 2.6 million people have physical disabilities (2%)
- 1.7 million people have hearing impairments (1.3%)
- 910 thousand people have visual impairments (0.7%)
- 1.3 million people have multiple disabilities (1%).

These figures were calculated in 1986 when the population of Brazil was about 130 million people. These numbers should be recalculated in the late 1990s based on a population of 155 million people.

Mental retardation is the most frequently diagnosed disability of those individuals receiving special education services (Novy, Pam, & Arns, 1992). This large number may be due mainly to a lack of knowledge of educators about the various types of disabilities that exist (e.g., autism, Rett syndrome, Fragile X) and the lack of facilities for genetic testing.

## INCLUSION IN BRAZIL

The model of inclusion developed in the United States cannot be applied directly to Brazilian schools. It is necessary that Brazilian educators and parents create their own model of inclusion, taking into consideration their social-economic-political-cultural singularities. The spectrum of social life in Brazil and in the United States of America have followed "radically different logics" as Brazilian anthropologist Roberto DaMatta explains:

> The historical-cultural process of Brazil (and Latin America) is one of having to open a social and political space for local and individual manifestations since everything is rigidly overseen and dominated by an enormous political, religious and legal centralism. The historical North American experience is one of generating laws which can invent or save totalities greater than local systems. In Brazil, individualism is created with effort, as something negative and against the laws which emanate from the state and define totality. In the United States, individualism is positive, and the thrust has been to create a union, a totality (1987, p.314).

Although the North American model of inclusion cannot be directly applied to the Brazilian context because of major historical and cultural differences, it still presents an important philosophy of being and acceptance. It is a way of accepting and helping others to belong. However, it can serve as a model of inspiration for Brazilian education.

Pearpoint and Forest (1992) have identified important questions which Brazilian people should ask to determine if they are willing to promote inclusion in the Brazilian context:

> What do we as a society really value?
>
> What kind of world do we want our children to live in?
>
> Are we willing to invest resources to prevent illiteracy, poverty, segregation, and pain? Are we willing to create a just society for all? (p. xvii)

## SPECIAL EDUCATION TEACHER PREPARATION

Special education in Brazil became a national priority in the early 1970s through the creation in 1973 of the Centro Nacional de Educação Especial-CENESP (National Center of Special Education) at the Ministry of Education of Brazil (Bueno, 1993). The training of specialized human resources in special education was established as one of the priorities of this new center. The creation of 40 undergraduate programs for certification in special education for the country was expected by 1979, but only 16 had been implemented by 1980 (Mazzotta in Bueno, 1993).

Over two decades later, the very inadequate training of Brazilian teachers in special education remains a concern (Alencar, 1994a). There are no training programs for teachers of children with autism in the country (Bereohff, 1994). Many other teachers have received 'emergency' training in short duration courses of less than 180 hours (Bueno, 1994). In 1987, of the 2,226 teachers for students with hearing impairments, 1,226 or 55% had finished high school; 142 (6.4%) had finished only middle school; and 371 (16.7%) had not received any special training to teach children with disabilities (Bueno, 1994). The reality of training programs for teachers of students with mental retardation (Nunes & Ferreira, 1994) and students with visual impairments (Masini, 1994) is not different from the others described before. As for talented and gifted students in Brazil, untrained teachers have not been able to respond to these students' needs and a waste of potential is the practice (Alencar, 1994b).

At the graduate level, advances have evolved since the creation of two master's degree programs in special education in the late 1970s. These are the only programs in the country and both are in the Southeast region of Brazil (Souza & Nale, 1994; Glat, 1994). These programs train professors and researchers for universities in different parts of the country. Several other specialization programs (latu sensu) have been offered for professionals with bachelor's degrees by public and private colleges.

As presented before, over 55% of special education teachers have only high school diplomas. Their access to university graduate programs or specialized courses is impossible, since they do not have bachelor's degrees. To become an elementary teacher (grades 1 to 5) in Brazil, eight years of basic schooling (the equivalent in the U.S. to elementary and middle school) and four years of magistério (high school with a teaching certificate) are required. A great number of Brazilian teachers are lay teachers, dedicated and talented teachers who have not gone through all the training required to qualify for a teaching certificate (Lima & Gazzetta, 1994). In the north and northeast regions of Brazil we find a great concentration of lay teachers who work in rural areas and small villages. These are people who respond to the need to teach younger students from their communities. Many of these teachers in rural areas of Brazil are high school students at night who teach elementary school grades during the day. Without special training in regular or special education, they learn to deal with all the educational needs in their classrooms.

In reality, there is a great need for training in both general education and special education. Additionally, there continues to be a need to provide already certified teachers with current information and training based on Brazilian reality. Utilization of Brazilian methodologies or philosophies has not been the common practice.

In truth, Brazilian special education is constantly influenced by changes in the United States. There is a dependence on the knowledge produced in the U.S. which influences new trends in Brazil. Due to the lack of research development in this area in Brazil, most professionals wait for new information to be translated from English into Portuguese. We may say that Brazilians live at least 10 years behind the U.S., for this is the time that books and other

written materials take to be translated and finally published in Portuguese.

This time delay has been historically considered and Lin (1987) explained it when comparing the creation of special education services in the United States, England, and Brazil:

> ... in Brazil the creation of provision tended to happen more than two decades later than in the United States and England. For instance, by 1820, the latter two countries already had educational provision for the deaf and the blind; whereas in Brazil the first institutions only appeared in the 1850s. Moreover, the provision for the mentally retarded in the United States and England was established in the 1850s and 1840s, respectively; while in Brazil it was established in 1870s. As for the creation of special classes for the mentally retarded, while the United States and England had their first classes in the 1890s, they began to appear in Brazil only after 1930. This delay in the development of special education in Brazil reflects the slow growth of popular education. While the United States and England had their primary education system already established from the early nineteenth century, and had the compulsory school attendance introduced in the 1850s and 1870s, respectively, in Brazil this took place only after 1920 (pp.262-263).

Historically, there has been in Brazil a tendency to buy knowledge and material goods from the first world. In this way people think that Brazil will rise to a level of international development. This happened in the 1800s with an exchange of books and studies with France in special education (Jannuzzi, 1985). However, the intellectual elite, through the efforts of some individuals, were more preoccupied in raising Brazil to the level of France, rather than developing Brazilian services.

## CONCEPTUAL FRAMEWORK

Since the early 1990s, the Federal Government of Brazil has channeled its energy into promoting changes in the field of special education. In 1992, autonomy was returned to special education through the reinstitution of the Brazilian Secretary of Special Education, as a department connected directly with the Ministry of Education.

In 1994, Brazil implemented a new policy of special education. Rosita Edler de Carvalho (1994), former Secretary of Special Education for Brazil, presented important definitions that aided in the understanding of the new policy: "Política de Educação Especial (Special Education Policy) is the science and art of establishing goals to serve the educational needs of people with disabilities, atypical conduct and high abilities, as well as to guide the governmental initiatives to achieve and sustain the established goals" (Carvalho, 1994, p.129).

The text of the new Política Nacional de Educação Especial (National Policy of Special Education) includes a conceptual framework which serves to enhance the understanding of the goals it established. Carvalho (1994) presented the following as the most important concepts and definitions from the new text:

- Educação Especial (Special Education): the wholistic process of providing for the development of all persons with disabilities from early intervention to higher education;
- Alunado da Educação Especial (Special Education Students): learners who require specific educational methodologies and pedagogical resources;
- Pessoa portadora de deficiência (Person with a disability): one who, in comparison with the majority of people, presents significant permanent differences which cause difficulties in her/his interaction with the physical and social environment;
- Pessoa portadora de necessidades especiais (Person with special needs): one who, because of a permanent or temporary disability needs specialized resources to overcome or minimize her/his difficulties; and
- Aluno com necessidades educativas especiais (Student with special educational needs): one who has difficulties in achieving school success and, to overcome or minimize these difficulties, needs physical adaptations and/or significant curriculum modifications.

## PRINCIPLES OF SPECIAL EDUCATION

The following principles are cited in the Política de Educação Especial as crucial points for the development of the goals established in that policy.

- Integração (Integration): the dynamic process of participation of persons in social relationships. Integration implies reciprocity.
- Normalização (Normalization): represents the philosophical-ideological basis of integration. It does not mean to normalize the person, but to normalize the context in which they exist.
- Individualização (Individualization): the adaptation of educational services to the needs of each person with special needs.
- Sociológico da Interdependência (Sociological interdependence): the requirement of interdisciplinary services from social, medical and psychological areas, in addition to educational services.
- Epistemológico da Construção do Real (Epistemological construction of the real): "Construction of the real" must consider individual differences and economic, social and political circumstances aimed at medium and long term goals for students with special education needs - the reconciliation between what is necessary to achieve the goals and interests of the person with special needs and the availability of resources.
- Efetividade dos Modelos de Atendimento Educacional (Efficiency of the educational services models): the quality of interactions among three elements: infra-structure (i.e., administrative, human and material resources); hierarchy of power (i.e., internal and external to the institutions involved); political consensus of social and educational functions (i.e., educational ideologies).
- Ajuste Econômico com a Dimensão Humana (Economic adjusting to the human dimension): refers to the value that should be attributed to the dignity of persons with special needs as integral beings. Therefore, the relationship of cost-benefit in special education should not prevail over the human dimensions of the persons with special needs who have the same rights as any other citizen. The lack of educational services for these persons represent in the long term, a high cost for the nations. (However, due to the economic, political and cultural singularities of Brazil (or any country), what is needed to improve the lives of Brazilians with disabilities has to be balanced with what is possible to do, taking into consideration the local reality, 'the real'. For example, the philosophy of inclusion might be the norm in North American countries. It would be the ideal in Brazil; for now, it is not the real. In other words, it requires a balance between the ideal and the real. Therefore, one must construct what is real for each country.
- Legitimidade (Legitimacy): the participation of persons with disabilities and high abilities, or their legal representatives, in the elaboration and formulation of public policies, plans, and programs.

The previous definitions parallel the definitions and concepts utilized throughout the disability community worldwide. In particular, the language is very similar to that utilized in the Americans with Disabilities Act of 1992 and the Individuals with Disabilities

Education Act of 1992.

## SERVICE MODELS IN SPECIAL EDUCATION

In Brazil's (1994) national policy of special education, students with special needs can be served in ten different types of service models. These models will vary according to student needs and imply different physical environments, human resources and materials. For the most part, they parallel those in use in most other parts of the world. They are:

- Escola Especial (Special School),
- Sala de Estimulação Essencial (Early Intervention Room),
- Classe Especial (Special Classroom),
- Oficina Pedagógica (Workshop)
- Sala de Recursos (Support Room),
- Professor Itinerante (Itinerant Teacher),
- Classe Comum (Regular Class),
- Classe Hospitalar (Hospital Classroom),
- Atendimento Domiciliar (Home Service),
- Centro Integrado de Educação Especial (Integrated Center of Special Education).

The salas de recursos (support rooms, not to be confused with the North American resource rooms) represent a unique Brazilian model which is now being implemented in public schools. Students with learning difficulties attend regular classes in the morning or afternoon (Brazilian schools are part-time), and in the other period (morning or afternoon) they receive special complementary support from a trained teacher. One teacher usually works with a small group of no more than four students a time. The frequency with which a student attends the support room varies according to each student's needs, but the average is three times a week for one hour each day. With few exceptions, students with physical and/or developmental disabilities attend special schools.

## INTEGRATION FIRST

From the principles described in the Brazilian policies of special education, integration is the one that has been most discussed and questioned. Brazilians are clearly discussing integration first and not inclusion. This reflects the need to integrate those who are marginalized by society. It means to bring them back or even to include them for the first time in society. The segregation of a person with a disability is very clear for all who care to see it. Melo (1986) wrote, "It is easy to observe that disabled people have great difficulty in finding their social integration in Brazil. The majority are marginalized and without the attention needed" (p. 30).

The principle of integration is explicit in Article 208 of the Brazilian Constitution, cited previously. In fact, Brazil has laws that cover most of the aspects of the life of a person with a disability. Flávio Arns (1992), a former State Deputy in Brazil, president of the Brazilian Council of Exceptional Children, and the parent of a child with a disability, has written about the principle of integration in Brazil. He stated, "The current laws in Brazil related to people who have disabilities already cover a good portion of the needs of this population segment. [...] the big question in Brazil today, since legal documents already exist, is to put them into practice" (p.2). Regarding the country's present situation, he said, "I prefer to use the expression 'fulfillment of rights' to 'integration' " (pp.2-3). He also suggested actions to take to reach integration in Brazil:

> It is important to avoid using imported techniques, considered unique, that unfortunately are being imposed on Brazil. How can we talk about integration if in over 4,000 towns in Brazil (more than 80%) there are no planned educational initiatives for people with disabilities? [...] it is important (a) to promote the awareness of families, society and public institutions of the rights of people with disabilities and (b) to promote the fulfillment of rights. Integration, in this perspective, is a "consequence" of the fulfillment of rights (p.3).

In a system that operates through networks of personal relationships, "obeying the laws... conveys the impression of anonymity and great inferiority. Normally this signifies an absence of relations.... " (DaMatta, 1987, p. 318). In Brazil, laws exist for individuals who do not have a strong network of relationships and therefore become a 'no-named person' subjected to the law. For example, persons with strong networks of relationships have access to employment opportunities unavailable to those without networks. Those without networks are confined to positions that typically hold little promise of long term security and benefits. Access to good quality school experiences, security in the eyes of the law, and future opportunities are also limited for those persons without networks. People with disabilities need to be part of a network of personal relationships to become a member of society and have their rights respected. Public education has much to contribute to this process of integration.

Public education in Brazil still represents a challenge for educators and policy makers. There is a clear need for educational systems change which will benefit all students, especially those students with disabilities and those from homes without powerful networks of personal relationships. It is important to reinforce the role of schools as places to raise the consciousness of all children. Students should all be integrated and, most important of all, have the right to an education with the basic resources. Moreover, we reinforce the need cited in Arns (1992) to promote the fulfillment of rights first, emphasizing the importance of adequate teacher training and development, which will lead Brazilian educators to develop their own models of special education.

## WIDENING SPECIAL EDUCATION: CONCLUDING REFLECTIONS

According to UNESCO's (1994) statistics, there are about 200 million children in the world who are denied access to education. With the second largest population in the Western hemisphere, Brazil contributes a large portion of this group. To address the needs of students without formal schooling, special education must assume a new role and can no longer be restricted to children with a range of physical, sensory, intellectual or emotional difficulties (UNESCO, 1994). The new concept of special needs education "has to be widened to include all children who, for whatever reason, are failing to benefit from school" (UNESCO, 1994, p.15). UNESCO's report alerts us to the fact that there are millions of children who are:

- experiencing difficulties in school, whether temporarily or permanently;
- lacking interest and motivation in learning;
- only able to complete one or two years of primary education
- forced to repeat grades;
- forced to work;
- living on the streets;
- living too far from any school;
- living in severe poverty or suffering from chronic malnutrition;
- victims of war and armed conflict;
- suffering continuing physical, emotional and sexual abuse; or
- simply not attending school, whatever may be the reason.

All these children have special educational needs. They are being prevented from learning and gaining knowledge which will allow them to progress in life. UNESCO's report continues:

> It is clear that the origins of their differences lie not just in themselves but also in the social environment in which they are living. The task for the future is to identify ways in which the school as part of that social environment can create better

learning opportunities for all children and by this means to address the challenge that "the most pervasive source of learning difficulties is the school system itself" (p.15).

To guarantee the implementation of all that has been proposed in the Brazilian policy of special needs education and the international framework of UNESCO, recruitment and training of educational personnel becomes a priority. The inadequacy and poor quality of teachers' preparation has been identified as Brazil's main challenge to the development of its policy in the 1990s. The Special Education program at the University of New Hampshire (USA), having become aware of the immediate needs of special education in Brazil, has started a partnership program with communities in the North-eastern coast of that country. The specific aim is the preparation of educational personnel to work with special needs and marginalized students. A partnership has evolved in both directions in which North and South American educators have benefited and learned together. As the partnership continues, it has become a work-in-progress called Project FOREDUCAÇÃO. Through this partnership, we will present voices from Brazilian and North American educators based on this two-way cultural and educational exchange program.

### *REFERENCES*


Alencar, E. (1994a). Um retrato da educação especial no Brasil. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Alencar, E. (1994b). Perspectivas e desafios da educação do superdotado. In Brasil. Secretaria de Educação Especial *Tendenciase desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Arns, F. (1992). A integração é consequência da realização dos direitos. *Integração*, 4 (4), 2-3.

Bereohff, A. (1994). Autismo: Uma história de Conquistas. In Brasil Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Brasil Constituição. (1988). *Constituição: República Federativa do Brasil*. Brasília: Senado Federal, Centro Gráfico.

Brasil MEC. (1994). *Política Nacional de Educação Especial. Brasília*: SEESP.

Bueno, J. (1993). *Educação Especial Brasileira: Integração/ segregação do aluno diferente*. São Paulo: EDUC.

Bueno, J. (1994). A Educação do deficiente auditivo no Brasil. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Carvalho, R. (1994). A política de educação especial no Brasil. In Brasil Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

DaMatta, R. (1987). The quest for citizenship in a relational Universe. In J. Wirth, E. Nunes and T. Bogenschild (Eds.), *State and society in Brazil: Continuity and change*. Boulder, CO: Westview Press.

Glat, R. (1994). O curso de mestrado em educação da UERJ: Caracterização do Eixo temático de educação especial. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Hess, D., & DaMatta, R. (Eds.). (1995). Introduction. *The Brazilian puzzle: Culture on the borderlands of the Western world*. New York: Columbia University Press.

Jannuzzi, G. (1985). *A luta pela educação do deficiente mental no Brasil*. São Paulo: Cortez.

Lima, E. & Gazzetta, M. (1994). From lay teachers to university students: The path for empowerment through culturally based pedagogical action. *Anthropology & Education Quarterly*, 25 (3), 236-249.

Lin, W. (1987). The development of special education in Brazil. Disability, *Handicap & Society*, 2, 259-273.

Masini, E. (1994). A Educação do portador de deficiência visual (D.V.)–As perspectivas do vidente e do não-vidente. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Melo, C. (1986). *Pessoas deficientes: Algumas coisas que é preciso saber*. São Paulo: Conselho Estadual para Assuntos da Pessoa Deficiente.

Mittler, H. (1995). Families speak out: International perspectives on families' experience of disability. Cambridge, MA: Brookline Books.

Novy, F., Pan, M., & Arns, F. (1992). Special education in Brazil: Service delivery system in profile. The View Finder: *DISES/The Council for Exceptional Children*, 1, 41-44.

Nunes, L. & Ferreira, J. (1994). Deficiência mental: O que as pesquisas Brasileiras têm revelado. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial* . Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

Pearpoint, J., & Forest, M. (1992). Forward. In S. Stainback & W. Stainback (Eds.), *Curriculum considerations in inclusive Classrooms:* Facilitating learning for all students. Baltimore: Paul H. Brookes.

Souza, D. & Nale, N. (1994). Formação de recursos humanos de alto n'vel em educação especial. In Brasil. Secretaria de Educação Especial. *Tendências e desafios da educação especial*. Organizadora Eunice M. L. Soriano de Alencar. Brasília: SEESP.

UNESCO. (1994). Final report: World Conference on Special Needs Education: Access and Quality." Salamanca, Spain, 7-10 June.

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